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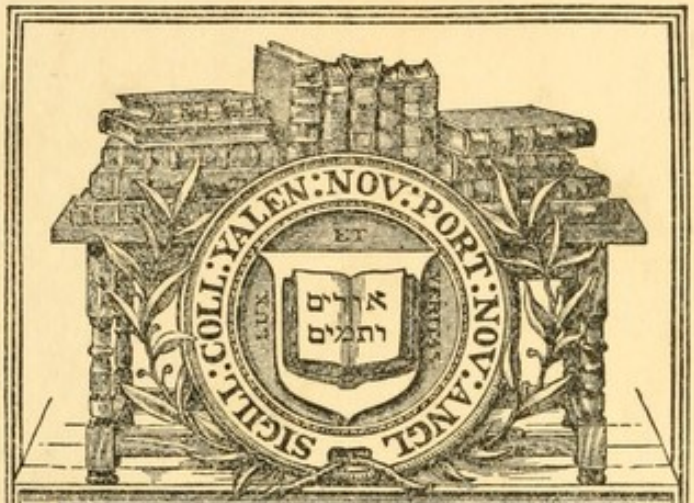

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PAPERS

READ BEFORE THE

MEDICO-LEGAL SOCIETY

OF NEW YORK,

FROM ITS ORGANIZATION.

THIRD SERIES.

1875 to 1878.

REVISED EDITION.

PRINTED BY A COMMITTEE OF
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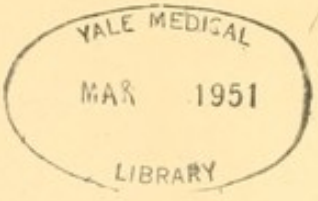

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PREFACE.

During the first term of Mr. Clark Bell as President of the Medico-Legal Society in the years 1872 and 1873, it was decided upon his recommendation to publish in book form the papers read before the Medico-Legal Society, and thus permanently preserve the more important labors of the body.

Volume first of the series of Medico-Legal papers was published November 1874, which embraced most of the papers of importance read before the Society up to the fall of 1871.

It was intended at that time to publish the succeeding papers (series two) the next year, but the retirement of Mr. Bell from the chair, and other circumstances, prevented, until the year 1882, when, upon his re-election as President, the original purpose was ordered carried out by the Society, and series two of these papers was published, which embraced many of the more important papers, read before the Society up to the Fall of 1874.

The present volume of the series, is a continuation of the ame general plan of publication, up to the Spring of 1878, embracing, also, a few of the earlier papers, which the committee had been unable to obtain, in time for the preceeding volumes. The Committee of Publication has been enlarged and now consists of Mr. R. S. Gurnsey, Chairman, Mr. Clark Bell, Mr. Richard B. Kimball, and Dr. Edward Bradley. The committee have been instructed by the Society to continue the publication of portraits of some of the authors of papers, officers, and distinguished Medical Jurists and members of the Society. The sketches furnished are by members of the Committee, with the exception of that of Dr. Conolly, which is contributed by Henry Mandsley, M. D., of London, that of Dr. George M. Beard, by Dr. A. J. Rockwell of New York, and that of Dr. Swayne Taylor, by Thomas Stevenson, M. D. of London.

New York, July, 1886.

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PHOTOTYPE F. GUTEKUNST PHILAD'A.

Very faithfully Yours

Clark Bell

Clark Bell, Esq.

Clark Bell, a brief sketch of whose career, we now present, is still in the full vigor and strength of manhood. He was born 54 years ago in Jefferson County, N. Y. He fitted for college at Franklin Academy, N. Y., and was prepared to enter Yale at 17, but was prevented from doing so, by the delicate state of his health. His physicians prescribed a course of hardy out-of-door exercise, which was pursued with a most happy result. He then studied law, and at the age of 21 was admitted to the bar, and began practice in Hammondsport, N Y., succeeding the late Morris Brown, with whom he had studied. On the retirement of Lieut. Governor Robert Campbell, Mr. Bell removed to Bath, Steuben County, where the firm of McMaster & Bell was formed, which at once entered upon a large and lucrative practice. The result was, to so far give Mr. Bell prominence in his profession, that he was retained by the Promoters of the Union Pacific Railway Company, as their Attorney and Counsel, and he thereupon in 1864, removed to the city of New York. Mr. Bell had charge for the company, of its legislation before both houses of Congress, and prepared the text of the act, which passed those bodies, under which the road was constructed

Since his removal to New York, Mr. Bell has been engaged in a large number, of important legal cases. It is not, however, as a distinguished lawyer, that we should speak of him, in this volume, but as a member of the Medico-Legal Society, which he joined in 1870. Since that time, notwithstanding his engagements in professional life, he has, more than any other American, rendered important service, to the great cause of Medical Jurisprudence. Here, in passing, we may say, that he has at different periods, served the Society six years as its President. But in all the years since he became a member

Mr. Bell has devoted himself enthusiastically, to its interests. He made the first collection of books for its use, which embraced works in English, French, and German; in fact, he was the founder of its library. By his active zeal, he brought the Medico-Legal Society of New York, into a deserved prominence, with the professions of law and medicine and with the public. What we consider as a still larger measure of usefulness, was the founding of the Medico-Legal Journal, in 1883, of which Mr. Bell was elected,and has since continued editor, and which was the first journal of its kind, ever published.

To Mr. Bell, more than any person in this country, in our judgment, is due the praise, of bringing the professions of Law and Medicine, into more intimate, social, scientific, and friendly, relations. He has certainly, by his efforts, aroused in the best minds of both professions, a lively interest in the too much neglected study, of Medical Jurisprudence. We hesitate to speak more particularly of Mr. Bell, since he is still engaged, in the most active manner, in those important labors, which it seems to us, have with him, but just begun. His literary efforts in this connection, have been very valuable. These include his inaugural and retiring addresses, during the six years, he was president of the Society, which, among other important topics, give a careful report, of the progress of forensic medicine, during that period. Besides these valuable contributions, we mention the following papers, as specially worthy of notice:

"The Coroner System and Its Needed Reforms."
"Suicide and Legislation."
"The Rights of the Insane."
"Madness and Crime."
"Shall We Hang the Insane Who Commit Homicide?"

Mr. Bell is an honorary member of the Societé de Medicine Mentale of Belgium, a Corresponding Member of the Anthropological Society of Brussels, Belgium, of the Medico-Legal Society of Massachusetts, and is in correspondence, with scientific men of all countries, on current questions of public interest, relating to Medical Jurisprudence. He has recently been named, as a member of the International

Committee, to represent North America, by the Conference held at Antwerp, September, 1885, to consider the best basis for international statistics regarding the Insane.

Mr. Bell is a man, of remarkable mental activity. He possesses a physique so sturdy, that it renders him capable of an almost unlimited amount, of intellectual labor. He seems never to spare himself, no matter in what engaged, but works without stint or intermission, till his work is accomplished. He is in the very zenith of vigor and energy, and may reasonably look forward to a long career of active usefulness.

R. B. K.

PRINCIPLES OF

LEGAL RESPONSIBILITY,

Applied to the Insane.

By JAMES J. O'DEA, M. D.

In archaic times, at the sources of the mingled stream of legal tradition and usage familiar to us at the present day, the theory of punishment was simplicity itself. Crimes in the modern technical sense of violations of State and social obligations were unknown, and the entire field of wrongs was conterminous with what is at present understood by the word tort or delict.

There was a time when punishment for a tort could have been lawfully inflicted by the aggrieved person himself. But at a later date in the progress of jurisprudence, a representative of social order was stationed between the contestants, and delivered judgement after a due hearing of the evidence offered by both sides. This judgement had two peculiarities, —it was *ex post facto*, and it was believed to be inspired by Heaven. We recognize here the *Themis* of primitive society.

With the decay of autocracy and the growth of an aristocratic class, the *Themis* disappeared, giving place to a body of customary law or collection of decisions drawn from customs the original scope and meaning of which was known to only a small minority in each community. In its turn this jurispru-

Read before the Medical Legal Society,

dence of custom shared a similar fate Transcending the powers of memory, it was replaced by a code. Then the law became fixed and knowable. No longer at the mercy of autocrats speaking by pretended inspiration, nor left to the judgement of an oligarchic court, it was written down like the decalogue of Moses, the laws of the Brahmins, the Roman codes.

Here we reach that stage in civic growth at which the idea of a commonwealth begins, and, dating therefrom, social aggregates had established rules on the impartial administration of which their existence as organized bodies depended. In some countries, Hindustan for example, the code found society half-way, as it were, on its career of development, and held it there ever afterwards like a fossil embedded in sedimentary rock. But in other and more fortunate lands it did not interfere with the natural course of developement, and, consequently, while the life of the latter is noted for action and progress, that of the former has little to show save stagnation or even retrogression. Instead of society having been obliged to conform,in progressive communities, to the letter of the law, the law itself was altered from time to time to suit the progress of society, and this alteration was effected by a system of interpretation which adapted laws to the peculiar circumstances of individual cases.

But I must not attempt to trace in detail the successive modifications by which codes were adapted to the phases of progressive societies. Suffice it to have briefly outlined the chief features of the developement through which rude forms and modes of archaic law have been transmuted into our modern judiciary procedures. Codes are the earliest evidence we have of the consent of societies to be ruled according to fixed principles of right. As already observed, they have undergone changes intended to suit them to altered times and circumstances. One of these changes has been alluded to already, but another of much greater importance to our present inquiry will appear as we proceed.

As bearing directly on the principles of legal responsibility in their application to the insane, I must refer to some observations by Dr. William A. Hammond in his recent work on

"Insanity in its Relations to Crime." This excellent monograph is unsatisfactory to me where it treats on the principles of penal legislation. "Laws," it declares, "do not always rest, in fact cannot always be based upon the principles of abstract justice." True; and, doubtless, it would be inaccurate to say that every law operates justly in regard to every individual, but nevertheless it may be confidently affirmed that the body of law is based on principles of abstract justice, or ethical principles, meaning by ethical principles such as are abstract and regulative of conduct apart from self-interest and that social interest denoted by the word utility, or the phrase "the greatest good of the greatest number." "Thou shalt not steal," "thou shalt not kill," are laws based quite as much on the abstract principle that theft and killing are wrong, as on the *a posteriori* experience that they are injurious to society. It is true that, as Dr. Hammond remarks, laws are sometimes unjust to individuals; and this truth is so well recognized that the principle known as equity has been instituted for the purpose of so softening their rigor as to make them considerate and merciful where the exercise of consideration and mercy are required by the circumstances of individual cases. But equity is not statute law; it is rather the just interpretation given to statute law by the good sense of its administrators. The chief difficulty in applying laws to particular cases is due to the fact that laws, on the whole are based on abstract principles, a consideration too often overlooked by people who blame them for their sometimes promiscuous way of dealing with transgressors. For though based, in part at least, on principles of abstract justice, applied laws have to do with practical affairs and should be adapted as much as possible to the circumstances which modify the character of actions. Although, for instance, all murder is killing, all killing is not murder, there being degrees of homicide depending on actual experience of the conditions under which it is committed.

Now, of all these conditions *intention* is the one which qualifies first and chiefest the character of all acts. To make any act criminal, there must be an intention on the part of its agent to commit it; and besides, intention and act must stand in the mutual relation of cause and effect. On this point the

remarks of the able writer above named are open to the objection that they do not distinguish between *intention* and *motive*. In commenting on declarations of courts of law to this effect, that "where there is no intention to commit a criminal offense no such offense, in the legal acceptation of the word, has been committed," he thinks it is dangerous to allow such a principle to obtain lest it place society "at the mercy of any individual who, with strong reformatory ideas which he may think it his duty to carry out, stops at nothing in the way of his good intentions." Accurately speaking, the *criminal* quality of an act has nothing to do with the reformatory ideas of any person, though these, when ascertained to be the real motives of his act may serve to mitigate the degree of its criminality. But that which imparts the quality of criminality is, first and most essentially the intention to do an unlawful act, and the doing it in immediate or remote connection with such intention.

The essence of a criminal deed is therefore *intention*; the circumstance which qualifies its criminal character is *motive*. Absence of intention exempts from legal penalty. Absence of motive does not confer this exemption, but when motive of the required kind is present it will lessen, in proportion to its kind, the degree of guilt.

Now, among the sum total of persons who are exempt from legal punishment we find the two following, namely, infants and the insane. Infants and the insane enjoy this immunity not because of their infancy or insanity *per se*, but because it is inferred from their State of infancy or insanity that they have not been guilty of unlawful intention. Such inference however is *prima facie* and provisional, and does not bar the admission of evidence to show that a particular infant or insane person had mental capacity enough to intend the act in the full legal sense of the word,—to intend to do it, and to know that its commission is a breach of law and a punishable offence. Whenever this is proved in the case of any infant or alleged lunatic, the rule of exemption is not applicable to him.

There is, however, one class of persons in whose behalf it is contended that, however capable of unlawful intent, they

should not be neld legally responsible ; and for such a special plea is advanced. This plea, I need hardly say, is *irresistible impulse.* It means that the person concerned was "ruled by one motive with such absolute sway that there" could have been "no room for the influence of any other." [Mill, J. S. Logic, p. 524, Am. Ed. 1867] It rests on a basis of reasoning like the following: Granted that the person knew he was doing an unlawful act and would be punished therefor, yet at the time of doing it he was mastered by an orgasm so overwhelming that he had no power of self-control.

The question at once arises, is there such a state? After which, supposing its existence conceded, comes the further inquiry as to whether it is a valid ground of exemption from legal responsibility ; for, as you will observe, the unlawful act of a person so situated has the essential requisite of criminality,—intention, and still its non-criminal character is asserted by many respectable authorities.

Is there a state of mind such as that meant by the expression "uncontrolable impulse." Authorties are not all agreed in their answers to this question. Some doubt if it often exists even among the insane Geisinger, for example, says that, "Few of the acts of the insane have the character of forced, purely automatic movements ; in mania also, according to the testimony of individuals who have recovered, many of the wild desires could often be restrained : the criminal deeds of the insane are not generally instinctive." [Mental Pathology, Sydenam Ed., 1867, §47.] Dr. Hammond also doubts "if it ever exist in the insane." All he feels at liberty to concede is that the insane "have impulses which are almost irresistible." [Hammond, *op. cit*, pp. 71, 72] On the other hand a great legal authority says, "It would be absurd to deny the possibility that such (irresistible) impulses may occur, or the fact that they have occurred, and have been acted on. The only question which the existence of such impulses can raise in the administration of criminal justice is, whether the particular impulse in question was irresistible as well as unresisted." [Stephen, English Criminal Law, London, 1863, p. 91.] It is pretty certain that the insane can us-

ually control their actions, and it is equally certain tnat on some occasions they can not.

But, excluding the question of insanity for the immediate present,—whether a given impulse is resistible or not can be known to its own subject alone. No outsider can determine it to any more than an approximate degree, nor by any other than the method of observation and inference. It is therefore best to forego attempts to discover its irresistibility by abstract thinking, and limit ourselves to a study of it in the concrete by more simple methods. We may proceed thus: Men are prompted to do evil and good, and with a large number of men the habit is formed of obeying impulse and passion. Good people subdue their desires, keep them in subjection, and, after a struggle of variable length, feel the inclination to do evil fade away before the steady purpose to follow in the right path. On this point an eminent writer of the present century has remarked: "The difference between a bad and a good man is not that the latter acts in opposition to his strongest desires: it is that his desire to do right and his aversion to doing wrong are strong enough to overcome, and, in the case of perfect virtue, to silence any other desire or aversion which may conflict with them. It is because this state of mind is possible to human nature that human beings are capable of moral government; and moral education consists in subjecting them to the discipline which has most tendency to bring them into this state." [Mill, J. S. "Examination of Sir W. Hamilton's Philosophy," 3d Ed., p. 560.] The reverse of all that Mr. Mill writes is true of the evil doer. He is the slave and instrument of his bad passions. His own gratification is his paramount desire.

The newspapers lately gave an account of a very revolting crime. An adult negro entered a house wherein its occupant's daughter was alone, and outraged her. He seized the terrified girl, announced his intention to her, and declared he would accomplish it though she were to suffer death at the very next moment. Now, what is the meaning of this? Here is a brutal man who braves the law with full knowledge of the criminality of his conduct and of its consequences to himself. Here if anywhere is a case of uncontrollable impulse; that is

of impulse which all ordinary motives did not control. Were we to base our decision on the mere character of an act, we could not help admitting that this particular act was uncontrollable; and, if we held that uncontrollable impulse is a valid plea in bar of punishment, we would be bound to acquit this negro.

It must be conceded that there is no *prima facie* difference between the mental state of this negro when he committed the crime above mentioned, and the mental state of the morally insane; nay, that there is no apparent difference between the manifestations which preceded the act of the former, and those which not seldom precede unlawful acts among the latter. Very few crimes are committed on the spur of the moment—immediately on the first promptings of the criminal desire; and for many reasons, such as the undeveloped strength of the motive, inopportune place, time and circumstances. Meanwhile the desire becomes a dominant idea absorbing the attention of its subject and changing his manner. He is preoccupied; he mutters to himself; at times he uses emphatic language and gestures; he seeks solitude and the companionship of his own thoughts. These are some of the indications in which courts of law see evidence of insanity, and the majority of persons who had observed them in a man would declare him to be insane even in the legal sense.

There is, however, a good practical ground of distinction between the irresistible impulse of sanity on the one side and insanity on the other, and it is this: The irresistible impulse of sanity has this special feature, that there was time in its growth when it could have been resisted. At that time the man was fully conscious of the nature and consequences of the deed suggested to him,—of its illegal character and of his own liability to punishment should he commit it. The history of a sane man who is at length possessed by an irresistible impulse, generally shows that he has surrendered himself after at most a few weak struggles to the dominion of his passions. At this point his conduct follows a conspicuous mental law,—the law of cohesion, according to which a series of acts often done consciously, come at length to be repeated, if not quite unconsciously at least automatically, in the same

way that an expert in vocal or instrumental music does from habit what took him a long time and great pains to accomplish. Will anyone seriously maintain that a musician is not to blame for a vicious style of execution because he has contracted a bad habit? I think not.

There is then, as it seems to me, a class of *quasi.-insane* persons, if you will, who are obedient to uncontrollable impulses which they know to be wrong, and who deserve to be punished; because their insanity—conceding it for the moment to be such—is born of sane impulses gratified so long that they have become unmanageable. Their punishment is justifiable on this ground at least, that it will tend to oblige others, who may be similarly inclined, to establish timely control over their evil desires.

Hitherto I have used the word uncontrollable to mean the insufficiency of *ordinary* motives to govern conduct. If a drunkard, say, is deterred from indulging his passion for drink, by a feeling of the actual or prospective damage, he is inflicting or may at a future time inflict on his health, reputation and prospects, or by the misery he entails on his family or friends, or by their admonitions and remonstrances, I call his passion controllable; but if not deterred by any of these checks, I call it uncontrollable, meaning that it is not controlled by ordinary motives. But this falls considerably short of proof of insanity, for on further experience we may find that an extraordinary motive might have controlled it. For instance, if the governing power were endowed with the faculty of seeing every case of drunkenness, however secret, and thereupon were to declare death to all who should get intoxicated, then those who were uninfluenced by ordinary motives to temperance, would be governed by this extraordinary one, and under these circumstances of secret sight and stern administration of the law, the passion for intoxicating drink would be controlled, unless where derangement of reason is proved to exist, and the power to appreciate the value of motives is consequently absent, we should not declare the uncontrollability of any human impulse until it has disregarded the severest punishments, and cautiously even then. It appears to me at present impossible that an irresistible impulse can

be proved to exist except in relation to some degree of mental derangement, and I am unable to admit that the seeming irresistibility of an impulse is of itself sufficient ground of exemption from punishment.

On the other hand, when I regard the mental state of veritable lunatics, of persons whose conduct is the product of their insanity as distinguished from those whose insanity is the product of their conduct, and ask myself whether on full consideration of their state punishment, and more particularly the extreme penalty of death, should be inflicted on them for their unlawful acts, the answer is No; because at the time of such acts, either they were incapable of unlawful intent, or though possessed of this mental capacity to some extent, they believed the acts justifiable.

These are two distinct states, and each deserves some consideration.

Take the case of an idiot whose mind is incapable of performing the elementary steps of reasoning, and suppose he commits an unlawful act. Owing to his state of idiocy he is innocent of unlawful intent, and is not responsible. The futility of punishment in such a case is one of the strongest arguments against it. It might protect society, to be sure, but, even so, the infliction of *capital* punishment on such a person could not be justified, unless every other way of restraining him had been exhausted. There does not seem to be any warrant in law, reason or human feeling for the proposal to slay the insane, who, by consequence of their insanity are monsters of wickedness, as we might slay wild animals, though their incurable moral obliquity is a good reason why the State should keep them in durance for life.

Take in the next place, the case of a man, who though knowing the abstract and legal wrong of an act, nevertheless commits it under a false impression that is justifiable. Is he responsible? Yes or No, according to circumstances, and of all circumstances, one in particular—delusion. Delusion holds that place in the insane man, which motive does in the sane man. It is in plain words the insane man's motive. There is no question that some insane people *intend* to commit unlawful acts knowing them to be unlawful and punishable; the point

I am suggesting in this insane motive, and whether it does not, or, at least, ought not to take away responsibility.

It appears to be a settled rule of law that the mere presence of a delusion in the mind of the accused, does not excuse his act. To have this effect, it must be of a kind which would excuse the act were it real and not a delusion. Thus, previous to the American Civil war, a man named Patrick Maude was executed in the city of New York, for the murder of his sister. It was shown in evidence at his trial that he had a delusion to the effect that his sister was conspiring with a priest, and other people, to *injure* him. Had his delusion been to the effect that his sister was about to kill him, and had he thereupon killed her, his act would have been excusable in the eye of the law on the ground that, were the delusion a fact, his deed would have been done in self-defense. But it remains a matter for serious doubt whether a malefactor's legal responsibility ought to be measured by a test so narrow and technical as this. A man who is deluded by the false belief that his acquaintances are conspiring to *injure* him, he may be every bit as insane as one who by way of hallucination sees them stealing upon him with murderous intent. My own firm conviction is that an illegal act, which can be traced to an insane delusion *governing conduct*, is excusable on the ground of the causative relation between the delusion and the deed, and not merely, as at present held, on the ground of its resemblance to and actual state of facts. If it be found that a delusion is related to an act as its cause, this relation alone should excuse the act, and it is unnecessary and unjust to require as condition of exemption, that the delusion itself should have the special relation of resemblance to an actual state of facts which, if present in the case, would justify the resulting act.

The point seems wholly lost sight of in discussions on the legal responsibility of lunatics, that delusions of the required intensity have a power proportioned to their character, and intensity of disturbing insane minds. A man with a harmless delusion, such for instance, as that part of him is made of glass, may never be anything more formidable than a nuisance to his family. Such a delusion has no tendency of itself to rouse feeling and force it into violent action. But the con-

sequence might be startling were he to become convinced through his false imaginings of the existence of a conspiracy to smash the glass part of his anatomy. And if this conviction were confirmed by hallucinations of sight or hearing, he might readily explode in a fatal outburst of insane passion.

There is another consideration. It is well-known that a prominent feature of insanity with delusions is loss of self-control, more particularly over feelings immediately connected with the existing delusion. The deluded lunatic is like the dreamer in that everything, no matter how incongruous and absurd, which his brain originates, is real, and in the additional fact that all power of controlling his ideas and feelings is at times in obeyance. I cannot therefore assent to Mr. David Dudley Field's declaration in a late address to you on the subject of "Emotional Insanity." "If," he said, "a person suffering under perceptional insanity thinks he sees an angel and hears a voice, as of the voice of God, commanding him to kill his child, and acts in obedience to the supposed command, I insist that, nevertheless, he should be punished for it." Without touching upon the psychology of hallucinations and delusions, I may remark with reference to this supposed case, that where such hallucinations possible to a sane man, he would not act in obedience to them, unless indeed he were astonishingly superstitious. But suppose him insane, his reason clouded, his actual experience in the world of facts obliterated, his moral self perverted; what in all probability would be the effect of so terrible a delusion on his conduct? What but to make him carry it into effect with an absorbing belief in its reality, and a firm sense of the lawfulness of the deed. And as the instrument of this delusion, he would not be stayed for one moment by the warning voice of that *alter ego*, that conscience which alone can supply his delusions with its corrective, but which is mute in him. For the mental characteristic of insanity, and *par consequence* of delusional insanity, is a double consciousness moving in parallel lines, one in the domain of actual experience, the other in that of baseless phantasm, between which the mind oscillates, now finding itself in one, now in an other; but the lines never meet, one or the other is simply forgotten as consciousness happens to

revert to a basis of fact on the one side, or to the creations of morbid fancy on the other.

This completes my survey of the two classes of insane persons to whom I have attempted to apply the main principles of legal responsibility. Of necessity, my observations have been limited to two points, namely, uncontrollable impulse and delusional or perceptional insanity, using the word perceptional in the sense given it by David Hume. I may now, for the sake of greater distinctness, sum up the results of the foregoing argument, as follows:

With regard to uncontrollable impulse, it deserves punishment when it results from the habitual indulgence of the passions, even though it be accompanied by indications of a disordered mind. It does not deserve punishment when it results immediately from a previously existing and still continuing state of insanity.

As regards the insane who have delusions, I would divide them into two main classes, with reference to their legal responsibility; first, those whose unlawful acts are not connected with their delusions in the relation of cause and effect. In the absence of evidence to establish this connection, such acts are presumably the effect of a sane phase of mind. Secondly, those whose unlawful acts are connected with their delusions in the relation of cause and effect. The former are legally responsible, the latter are not.

That numbers of the insane possess power of self-restraint is true. Their conduct can also be governed by rewards and punishments. But so can the conduct of children, and of the more sagacious of the brute-creation. Again, so far as the insane are corcerned, it is their *sane* conduct that can be so governed. Their *insane* conduct is that which baffles ordinary control, and on account of which they are placed in lunatic asylums. No properly conducted mad-house would tolerate the punishment of lunatics *during* access of their insane fits. Punishment at such times might find some color of justification, if its intention were to impress other insane persons in their intervals of comparative sanity; but as a means of arresting insane demonstrations already begun, I think that, if it is not, it ought to be condemned.

MONOMANIA,

AS AFFECTING TESTAMENTARY CAPACITY.

By EDWARD PATTERSON, Esq., of the New York Bar.

The conservatism of the law necessarily prevents its keeping pace with the progress of general science. It rejects everything that is merely speculative or tentative, and refuses to recognize, as a rule of action, aught that lies merely in the domain of theory or supposition. It rests upon authority for its highest sanction and support; and thus the results of the experience and knowledge of one period have become formulated into rules and laws for the guidance and direction of succeeding generations. These rules continue to be operative long after the occasions which gave them origin, or the circumstances out of which they arose (or their parallels) have ceased to influence the conduct of men or the affairs of life. The jurisprudence of to-day is weighted with a multitude of practical anachronisms (if that expression may be permitted), many of them so closely and intimately interwoven with the texture of the system itself, that rashly to attempt their severance or extirpation would bring about the disaster of increased confusion and perplexity. The great desideratum of our municipal law is *certainty* of decision; and the necessity for the maintenance of this element induces the tribunals charged with the administration of the law, to adhere to ancient principles even although they are out of place, rather than to announce with precipitancy the inutility or un-

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fitness of those principles as criteria of rights, obligations or responsibilities. The liberation of a principle of law from the entanglement of antique limitations; the extension of that principle or of some engraftment upon it to cases which could not have arisen when it was promulgated; the modification of rigid rules to meet new emergencies; the proclamation by judicial utterance that a rule has ceased to apply because the reason of the rule has ceased, are matters so difficult, requiring so much knowledge, intelligence and courage, that in the absence of legislation few Judges would assume the responsibility of attempting to accomplish them. "It is better to cling to old land-marks," it is said, "than to map out new boundaries," and this undoubtedly describes the disposition of the average of the Judiciary. The radical changes in our laws during the last two centuries, which have been affected by causes other than direct and definite legislation, are not numerous except as they may have arisen from the development and extension of the jurisdiction of Courts of Chancery, and the adoption of equitable remedies Indeed it may be rightfully claimed that the whole of our Equity jurisprudence, historically considered is nothing but the record of the triumphs of reformers over this tendency of the law to stagnate; these victories being wrought into a system of practical devices to correct the inflexibility of common law dictates. The insufficiency of these devices to answer any purpose of permanent improvement was, however, soon made manifest, for they in their turn, acted upon by the habit of the Courts, soon passed into authority and became obdurate and unyielding rules. The words of Sir Thomas Browne are as appropriate now as they were two hundred years ago: "The mortalest enemy unto knowledge, and that which has done the greatest execution upon truth, hath been a peremptory adhesion unto authority, and more especially the establishing of our beliefs upon the dictates of antiquity. For (as every capacity may observe) most men of ages present so superstitiously do look on ages past, that the authorities of the one exceed the reasons of the other." [Essay on Vulgar Errors.]

The incongruities and ineptitudes in the relations between

authority and the demands of society for appropriate laws to regulate the affairs of men as they actually exist and require government, furnish at once the impulse to and the difficulties in the way of intelligent and efficient law reform. The question is, how can certainty and uniformity of decision be secure and yet the system of jurisprudence be so moulded as to render it feasible to conform it to the changes which the rapidly advancing and varying civilization of modern times imperatively demand. The difficulties in the way of the solution of this question are, in the judgment of most thinkers, only to be obviated by the enactment of all necessary rules in the shape of a consolidated code, like the Code of France, or the unadopted Civil Code of the State of New York, which shall supersede all the sources of the law as they are now resorted to, and which by reason of its compactness may present in an accessible shape, the whole body of the law, and may also, because of its structure, from time to time, and without violence to or impairment of its other parts, be amended in any given particular as the exigencies of the times or the new experiences of the community may require.

The value of these observations will be apparent to the general lawyer, to whom many illustrations will at once occur. Their force will be appreciated by the gentlemen of the medical profession, if they will reflect upon the history of the efforts that have been made to establish proper views in the decisions of the Courts, upon the various departments of the subject which we designate by the generic term Insanity. What has already been said applies as well to the condition and history of our jurisprudence upon this subject as to any other topic of the law. It is true that the evil was substantially inevitable, and that it is idle to quarrel now with conditions which it is only our duty to endeavor to rectify. Palpable and gross errors are committed every day in the Courts of law on the subject of Insanity, which Courts are constantly clinging to exploded notions, or discussing, as open questions, matters relating to mental phenomena which have long since been settled by the medical faculty. It would be, of course, sheer folly to advocate the departure by any Court, from the principles of decision which have guided it in the past,

or even to urge an alteration, until it can be shown that an adherence to those principles really operates an injustice; but that being proven, it does seem something worse than absurd to go groping with rush lights in darkened chambers of thought, when by simply opening the windows we may see all the illuminating power of the sun. I fully appreciate the delicacy of applying the test in the first instance to determine what is and what is not genuine advance, and also the magnitude of the task of evolving general rules from a mass of individual cases, the details of each of which must necessarily differ from those of all others. It must be conceded likewise, that no one man is entirely equal to the work of rearing an acceptable and just system of jurisprudence on this subject of insanity,although many understand it clearly in its physical and mental aspects and relations. What is to be accomplished in this way can best be done by some agency of skilled, patient, learned and experienced minds of the medical and legal professions, organized as this society is, or on some other plan of conjoint effort and labor; and whatever is done will require the utmost circumspection to prevent too great a recoil in the wrong direction. It is a mere truism, but an important one,that anything that diminishes the prospect of punishment increases the inducements to crime; and whatever may be undertaken in the interests of humanity and in the progress of science, to correct the errors and mitigate the severities of the criminal law on the subject of insane malefactors, there will constantly be presented this difficult problem,viz.: How to strengthen the course of public justice and morality, and at the same time preserve the rights and privileges of these unfortunates.

I do not propose dwelling upon this particular topic longer, but who has not been impressed by the glaring wrongs that have been perpetrated in the name of the law upon the miserable and unfortunate? It is not very many years ago that the penal laws of christian and enlightened nations demanded the blood of victims whose real offences were no graver than the possession of understandings wrecked and intellects disordered. These were not the objects only of popular delusions and superstitions, against whom the malevolence of whole com-

munities found fierce delight in wreaking "the injustice of revenge;" but they were people solemnly arraigned for ordinary felonies, carefully and temperately tried, and condemned upon well-grounded and time-honored and reverend dogmas of the law. They stood in the gloom of a general presumption that *every* man intends the consequence of his acts (which is but a half truth at best), and of what seems to have been accepted as a postulate that consequences are conclusive evidence of intention. It cannot be doubted that effects of acts alone, without regard to the office of the will in inducing those acts have settled the adverse destinies of many persons who judged by our standards to-day, would be regarded as guiltless of intended crime. It is true that these occurrences transpired during periods of comparative ignorance; but it is likewise true that the condition of the law has been such as to render these things possible, long after the disclosures of science have made known that impulses to crime are sometimes uncontrollable, and may be the effect of obscure mental disease as well as the product of depravity. How unsatisfactory is the present condition of the law on the subject of Insanity as excusing crime, and how great are the needs of careful and well-devised methods for its amelioration, the objects and the efforts of this Society attest.

But it is not only with reference to crime that the imperfect condition of the law as to Insanity is displayed. There is current in the decisions of the Courts, and in the general literature of the law, much of serious error respecting mental disease as influencing the testamentary capacity of the person affected by it. What is most noticeable is that the state of legal knowledge and the result of judicial decision on this subject seem to fluctuate between opinions of a hundred years ago, and those of recent times; the former re-appearing and being re-asserted when least anticipated, and receiving application and enforcement in most unexpected quarters; and more especially is this to be observed in those litigations, the facts of which indicate that the person whose testamentary act is assailed upon the ground of incapacity to make a will, was, or was supposed to be, the subject of that mental malady which is now known to be a distinct and peculiar condition,

and to which we assign the designation "monomania." By some it is claimed that any delusion—and in many cases it is believed that illusions and hallucinations, where they are persistent, disqualify a person from making a valid will; while others assert that the old dogmas as to absolute alienation of mind are the true rules of decision on questions of testamentary capacity. Neither of these views is correct, and it is my purpose this evening to trace in a very general way the growth of the doctrines of law properly applicable to wills, contested by a testator's relatives upon the allegation of monomania, and to refer, although desultorily to the origin of those doctrines as exhibited in several of the principal litigations in which they have been enunciated; and to show that there is one just, reasonable and sufficient rule to cover all such cases —a rule however which, although it has received the approbation of the cultured minds of the two professions most interested in its maintenance, is nevertheless very often entirely ignored by Judges in cases as to which no other rule can in consonance with justice be applied.

The general inquiry in all investigations concerning the mental condition of a testator should be: Was or was not the individual *compos mentis*, at the time of the performance of the testamentary act? This is substantially the test as adopted by the Court of Appeals of the State of New York. That Court in the Parrish Will Case (Delafield *v.* Parrish, 25, N. Y. 97), a majority of the Judges concurring, held that "in law the only standard as to mental capacity in all who are not idiots or lunatics, is found in the fact whether the testator was *compos mentis*, or *non compos mentis*, as those terms are used in their fixed legal meaning." A lunatic, or one who is the subject of general derangement, is absolutely *non compos mentis* and cannot make a valid will, except during the supervention of a lucid interval. He is "one who is subject to a continued impetuosity of thought which, for the time being, totally unfits him for judging and acting in relation to the affairs of life, with the composure and deliberation necessary to their maintenance and proper discharge." The law disqualifies such a person from performing a testamentary act (just as it would, but upon less stringent evidence, exonorate him from

responsibility for an action which under other circumstances of commission would be criminal), unless it be shown that at the time of making the will there was a remission of the disease. It may not be inappropriate to remark in this place, that there is a sceptical disposition abroad on this subject of lucid intervals. The question is mooted as to whether they really occur—whether there is any other condition than that of the presence or absence of the mental disturbing cause. If mental maladies are attributable to structural changes in the brain, it seems strange that there should be a suspension or cessation of the processes, or the effects of processes operating such a change, and which suspension or cessation is merely temporary and intermittent; but the doctrines of the law on this matter are deeply laid, and now seem to be of general acceptance in the Courts.

That unsoundness of mind which is involved in all judicial inquiries as to a testator's ability to make a valid will may be either of two descriptions, viz.: general insanity or partial insanity. The recognition by the law of these divisions, which shortly necessitated the adoption of a rule specially adapted to each, marks a great and important era in the judicial history of Insanity. Prior to the days of the American Revolution, the distinction, if taken by writers, or advanced by the more progressive and better-informed of the medical profession, had no favor in the Courts of law. Indeed, from the time of Sir Edward Coke through to Lord Hardwicke's time, the severest and most inclusive rule of testamentary privilege was enforced. The English Courts formerly entertained jurisdiction to avoid instruments upon allegations of mental incapacity only in cases of "a total loss of understanding," where "one by grief, sickness or other accident, wholly loseth his understanding," is the language of one of the oldest cases. In the Criminal Courts, some attempts had been made to establish the doctrine that limited insanity excused crime, but the effort was not successful; for it was held about the year 1725, in the case of Arnold, that insanity as a defense to an indictment must amount to a total deprivation of understanding and memory, so that a man could be no more conscious of the probable effects of his acts than an infant or a brute.

The ruling in this case has furnished Dr. Maudsley with his very expressive phrase, the "wild beast" theory of responsibility for crime. In investigations under writs *de lunatico inquirendo*, partial insanity had been adjudged sufficient to authorize the sequestration of property and its transferrence to the charge of a committee; but I am considering the history of the subject in strictly testamentary cases, and in such cases only.

The extended and enlarged jurisdiction in which the partial insanity of a testator was recognized as sufficient cause for the avoidance of his will, seems to have originated after the retirement of Lord Hardwicke from the Chancery in 1756. In *ex parte Barnsby* (3 Atk.), that illustrious Chancellor held, that "*insanæ mentis*" (a term then used to designate what we now call a lunatic), "*non compos mentis*," and "*unsound mind*," are synonymous expressions. Hence a man, to be incompetent to devise or bequeath his property, must have been substantially a lunatic. The distinctions are not apprehended between partial and total insanity, and it is not until the case of Mr. Greenwood, in the earlier years of the reign of George Third, that we have a distinct foreshadowing of the doctrine which has become so vital and necessary in these days.

Before proceeding further, let me refer to the classification and separation into groups of the various forms of unsoundness of mind, as they are distributed in the terminology of the medical profession.

Esquirol (*des Malades Mentales*) distributes these morbid mental phenomena into five classes, viz.:

1. Melancholia.
2. Monomania.
3. Mania.
4. Dementia.
5. Idiocy or Imbecility.

This distribution or classification is accepted and adopted by the most eminent writers upon these subjects. Dr. Hammond quotes Esquirol with approbation in his most lucid and admirable monograph on "Insanity in its medico-legal relations," a production which, in connection with the facts and circumstances of the contested Will Case of James C. John-

ston of North Carolina, furnishes one of the most instructive and satisfactory contributions that have been made to the literature of the subject of Monomania. I regret that for want of time further reference to this case of Johnston (which would well illustrate some of the views I shall hereinafter present) must be omitted.

The first and second of the classes falling under the distribution of Esquirol, viz.: Melancholia (which is defined by a quaint writer as "sadness without a reasonable cause,") and Monomania, belong to the division of partial insanity, and Monomania often borders upon Mania.

To define with some attempt at clearness the respective conditions of general and partial insanity may be of service. If I might venture a definition of my own, I would describe general insanity to be that aberration of mind, the result of grief, disease or accident, which prevents the subject of it from using his reason, or which substitutes for the clear operations of the mind a morbid fancy, a perverted understanding, a delusive apprehension of the affairs and business of life, whence arise an unstable judgment, an infirm, feeble, vacillating will; a diseased and fantastic imagination, wholly irrational and abnormal.

Partial insanity is that condition of mind in which the individual is rational and intelligent on all subjects except the particular topic or class or system of topics as to which he labors under delusion.

The form in which partial insanity is presented to the notice of Probate Courts, and generally in testamentary cases, is almost always in connection with Monomania alone.

Esquirol defines Monomania to be, "perversity of understanding limited to a single object, or small number of objects, with predominance of mental excitement."

Each of the two chief divisions of mental incapacity, has applicable to it its peculiar and distinct rule of law:

1st. Where the evidence shows the testator to have been totally insane shortly before the time of the execution of the will, testamentary incapacity is presumed to have existed *at* the time of its execution, and the *onus probandi* is thrown upon those claiming the validity of the instrument to countervail

this presumption by evidence of a lucid interval during which the testamentary act was performed.

2d. In the case of partial insanity, or partial unsoundness of mind, generally evinced in the form of Monomania, it devolves upon the contestants to show, *that the will is the direct offspring of that insanity*, or in other words, the burthen of proof is upon the contestants to show that the partial insanity existed at the time of the execution of the will, and that to its existence and its operation in and influence upon the mind of the testator their disherison is to be attributed.

As before stated, the earlier adjudications are silent upon the distinction between general and partial insanity. As clearly defined and as generally accepted as these distinctions seem to be now, to those who have studiously considered the subject, nevertheless, the same relation back to the conceits of the past—entirely inappropriate and out of accord with modern discovery, and the *real* requirements of the present—appears on this subject in very recent cases. As an example, I select from among several lately examined, that of *Stackhouse* v. *Horton*, 15. *N. J., Ch. R.* 202. By this case it would seem that there are but few if any restrictions upon the testamentary acts of those partially insane. The case seems to have been well decided as to the immediate facts involved, but the learned Chancellor in the course of his opinion sees fit to lay down as a broad principle that "a person may be the subject of a partial derangement toward a particular person, and this derangement may be the cause of depriving such individual of the bounty of the testator, which he otherwise would have enjoyed, and yet the will made by such a person be valid." I refer to this declaration of the law, merely as an illustration of how fixed is the disposition of even the most competent magistrates to seek shelter under the shades of antiquated rulings, and to impress the facts as pertinent to the present subject, that this tendency to revert to the rules of the past is one of the causes of so much of practical error in our present modes of administering justice. The doctrine of the Chancellor in the case referred to, unlimited and unrestrained, would sweep away all experience and progress of quite fifty years, upon the subject of which he was treating, and could

only find its justification in the assumption that there is no verity in any other rule than that ancient and exploded one, that total insanity is alone a cause of testamentary incapacity.

It is quite incompatible with the design of this paper, to refer to any great number of adjudicated cases, for time and space will not allow it. For the same reason, I must intermit any use of the text writers for a similar purpose. I will therefore consider but a few of the decisions of Courts, and only such as will serve and are necessary to the purpose of sufficient presentation of the subject under discussion.

The first, and for that reason the most conspicuous litigation relating to the distinction between the two classes of insanity, is not fully reported in any book, and so far as its details are concerned, it may be called merely traditional. Nevertheless, because of its definition of principle, and clear enunciation of a new rule, it is more frequently cited by Judges and counsel than any other case. Erskine in his argument to the jury in the trial of James Hadfield, speaks as follows: "The deceased Mr. Greenwood, whilst insane, took up an idea that his brother had administered poison to him, *and this became the prominent feature of his insanity*. In a few months however, he recovered his senses, and returned to his profession, which was that of a barrister, but could never divest his mind of the morbid delusion that his brother had attempted to poison him, under the influence of which (so said) he disinherited him. On a trial in the Court of Kings Bench upon an issue *devisavit vel non*, a jury found against the will; but a contrary verdict was had in the Common Pleas, and the case ended in a compromise."

The mental trouble with which Mr. Greenwood was afflicted, was clearly monomania—to his brother was his hostility limited; and it seems that it was an ever-present delusion that his brother was attempting to murder him. Lord Kenyon in charging the jury is reported to have said, "If you think that whenever that topic occurred to him it *totally* deranged his mind, and prevented him from judging of who the objects of his bounty should be, according to his own will, then the will cannot stand; but if you think he was of competent mind to make his will, to exercise his judgment, however that might

be disturbed by passions which ought not to be encouraged, then the will ought to stand."

This case is probably entitled to be regarded as the pioneer of the correct rule of law on the subject of partial insanity. There was proof in the case of a restoration to health, sufficient to enable Mr. Greenwood to resume the practice of his arduous profession. Under the old rule his will would have been valid, and even under Lord Kenyon's charge the condition of *total derangement of mind*, superinduced by the one subject of delusion, was required as the belief which the jury must entertain before pronouncing against the will. This phrase "totally deranged his mind," in the connection in which Lord Kenyon used it, is very significant. The learned Judge was not willing to proceed to a radical change in his definitions. He did not care to pronounce that Mr. Greenwood may have been entirely sane on every other subject of mental contemplation, except his relations to his brother, and yet, if, as to those relations, he entertained delusions which were so inveterate in their character as to induce him to exclude that brother from a share in his bounty, he could not make a valid will; but he approximates it by holding that if as the disturbing cause operating a dethronement of reason, he entertained this aversion to his brother, then that delusion disqualified him from making a will. The consequence and effects of the diseased intellect, astray as to only one subject or class or system of subjects, were, in the estimation of Lord Kenyon, to be of so serious and all-pervading a character as actually to unsettle all the mental processes during the period of the presence and operation of the one cause of disturbance. Here are displayed errors very natural to the incipiency of the subject. Lord Kenyon evidently contemplated two things as associated with monomania, which have since been ascertained to be not characteristic of it; *first*, that it effects the mind always as if it influenced all mental operations during the times of its manifestations, utterly preventing the use of reason during those times; and *second*, that there are periods of remission analogous to or really constituting lucid intervals.

Before the new idea thus introduced on the precedent of

Greenwood's case, could be utilized and commended for general adoption in similar cases, it became necessary to relieve the rule of what was yet cumbersome and unphilosophical in it. This was done, and the law further fashioned in another celebrated case in England, constantly referred to in the books, and cited as *Dew* v. *Clark*. This is very justly considered the leading case on the subject, and will therefore, permit a few moments consideration of its history.

It was twice at bar in the Prerogative Court of Canterbury, before Sir John Nichol. It came up originally in Trinity Term, 1822, on an application made by the contestant for leave to set up a plea of partial insanity as invalidating the will of a Mr. Ely Stott, who had conceived a monomaniacal dislike to, amounting to extreme hatred of, his daughter, Mrs. Dew. The motion was opposed on the ground that partial insanity did not by the law of England incapacitate a person from making a will. The plea was admitted however by the Court, on the authority of Greenwood's case; nevertheless the intimation was quite direct, that it would be almost a hopeless effort to undertake to establish by proof all that would be required to support such a plea. The reluctance to depart from the theories of the past, although they were confessedly untenable, is here distinctly exhibited. Proofs were taken, and afterwards the cause came up for hearing upon them. It appeared that Mr. Stott made a will in 1818. A commission *de lunatico inquirendo* was sued out against him in July, 1821. He was pronounced a lunatic and to have been such since (but not prior to) 1st January, 1821.

It was proven that the testator regarded his daughter as "invested with singular depravity, a peculiar victim of vice and evil, the special property of Satan from her birth, etc." and that he had very peculiar religious views. The essential facts of the case, however, as illustrating the rule evolved from them and enunciated by the Court, are those connected with the insane abhorence and detestation in which he held his daughter, and which undoubtedly were the causes of her exclusion from a share of his estate. In other words he was a monomaniac.

The decision of the Court on these facts is reported in 3.

Addams. The syllabus of the case gives such an excellent epitome of the decision that it will suffice to quote it :

"Partial insanity is good in defeasance of a will founded immediately (so to be presumed) in or upon such partial insanity. If A. then makes a will plainly inofficious in respect to B., and *is proved at the time of making it to have been under morbid delusion* as to the character and conduct of B., the Court of Probate will relieve by pronouncing this will to be invalid, and holding A. to have died intestate."

From this case of *Dew* v. *Clark* we have received the only clear, just and practical doctrine of the effect of monomania upon testamentary dispositions of property. It establishes the rule recognized and enforced in the best considered subsequent cases both in England and America—not in the way of merely following the precedent, but upon careful and exact reasoning and argument. From these cases we ascertain that two elements must co-exist to afford sufficient ground for nullifying at the instigation of his relatives the will of a person afflicted with monomaniacal delusions.

First. There must be plainly a inofficious will ; or a will lacking in natural affection and duty.

Second. There must be morbid delusion actually existing at the time of making, and undoubtedly prompting the provisions of the inofficious instrument.

As this rule has been accepted and applied under the special circumstances of almost all the English cases which have been decided since *Dew* v. *Clark*, and in which the subject was involved, it will be unnecessary to make further citations. I would mention, however, that where there may *seem* to be departures from it, in such cases as *Waring* v. *Waring*, and *Smith* v. *Tebbetts*, it will be found that those are strictly cases of general insanity. In the first of these cases the opinion of Lord Brougham has met with very severe animadversion.

The rule laid down in *Dew* v. *Clark* has found ready adoption and application in the American cases. I will refer only to two or three of them in which the doctrine has been very forcibly and satisfactorily set forth. The first is only a *Nisi Prius* case, but the views are advanced by a Judge of eminent learning and sagacity who so lucidly pronounces the rule,

that is is evident he bestowed much time and thought upon it. In *Leach* v. *Leach*, 11. *Penn. Law J.*, King, Justice, in charging the Jury said :

"*A monomaniacal delusion inveterately entertained by a testator, against one who would otherwise have been the natural object of his bounty, and shown to be the reason which has excluded him from it, and to have had no other existence, except in the distempered imagination of the testator*, would invalidate a will made under such influence, and for the very plain reason that a will made under such an insane delusion is not what the law requires a will to be, viz.: the product of a mind capable of reasoning rightly. For although the law recognizes the difference between general and partial insanity, yet if the will has been made under the influence of such partial insanity, and as the product of it, it is as invalid as if made under the effects of an insanity never so general."

In *Stanton* v. *Weatherwax*, 16 *Barb.*, 259, Gridley, Justice, delivering the opinion of the New York Supreme Court, says: "A monomaniac may make a valid will, when the provisions of the will are entirely unconnected with and uninfluenced by the particular delusion. But when there is good reason to believe that the will is the offspring of that particular delusion, which has seized his mind and controlled its operations, the result is otherwise. A will thus made under the influence of a powerful delusion, which has not only impaired, but perverted his judgment and understanding in connection with the provisions of the will, so as to exercise a controlling influence on the disposition of his property, is not the will of a person of sound mind. His mind is unsound *quoad* the very subject on which he is called to exercise his powers in making the will."

In *Seamans Friend Society* v. *Hopper*, 33. *N. Y.*, 619, Denio, Chief Justice for the New York Court of Appeals, says : "If a person persistently believes supposed facts, which have no real existence except in his perverted imagination, and against all evidence and probability, and conducts himself however logically upon the assumption of their existence, he is, *as far as they are concerned*, under a morbid delusion, and delusion in that sense is insanity. If the deceased in the present case

was unconsciously laboring under a delusion as thus defined, in respect to his wife and family connections, who would naturally have been the objects of his testamentary bounty *when he executed* his will, or when he dictated it (if he did dictate it), and the Court can see that its dispository provisions were or might have been caused or affected by the delusions, the instrument is not his will and cannot be supported as such in a Court of Justice."

These cases and the reasoning applicable to the facts appearing in them, establish that in cases of partial insanity or monomania, unless the contestants can clearly trace their disherison to the delusion of the testator existing at the time of making the will, the legal presumption of testamentary capacity which always attaches until it is countervailed by express proof, is not overcome.

The rule with relation to disqualification from testatory power in cases of monomania as stated, finds as valuable illustration in causes in which delusions of a more or less insane character have been proven as isolated conditions, not directly affecting the wills or dispository provisions of those subject to them (and in which causes, therefore, the testamentary acts have been sustained), as it does in those in which from their circumstances the inference was inevitable that the existence and operation of the delusions caused the testator to withhold his bounty from those who should have received its benefits. In the class of causes to which I now advert the delusions were generally of such a character as referred either to religious vagaries, or inordinate credulities as to supernatural phenomena, or other erratic ideas and convictions upon topics which we rightly term superstitions. In dealing with such subjects the Courts should decline to regard as satisfactory evidence of altogether perverted intelligence, the exhibition sporadically of those peculiarities of belief which formerly were incorporated in the creeds of devout men of various religions and nationalities. There can be no legal standard of normal religious faith—the world is too far advanced for that; but even in christianity, orthodoxy and heterodoxy have more than once changed places in the course of time, and the saint of to-day would probably have

graduated in martyrdom a few centuries ago. Hecatombs have been offered up to appease the demand of the intellect of the world for the extinction of witchcraft. What more horrible impeachment of human wisdom than that defaces the history of our race? But yet occasional evidences of a pure and sincere belief in that fatal fantasy are presented to our observation among our own contemporaries. Although the tales, believed with all the earnestness of religious faith two or three hundred years ago, are scarcely enough to evoke more than a contemptuous smile from a strong-minded child; yet some weak-minded men, entirely competent, however, to perform all the ordinary duties and make all the ordinary discriminations of life, give these or similar fables entire credence. These peculiar and infrequent cases, running counter to the sceptical, more enlightened and better instructed opinions of the times, are nothing more than isolated instances of what were earnest, deliberate and intensely believed articles of faith of such men as Popes Innocent 8th, Julian 2d, Adrian 7th; Sir Edward Coke, Sir Matthew Hale, Lord Bacon probably, Erasmus, Martin Luther, Calvin, Baxter, Sir Thomas Browne, Cotton Mather, John Wesley. The belief in modern spiritualism, with its puzzles and mysteries of mechanical or mesmeric effects, or whatever they may be, is entertained by many of the most subtle, acute and accurate minds—and yet, should the mere holding of these convictions and kindred infatuations, of the very essence of delusions to the accredited standard of rationality—no matter how fervent they may be and with whatsoever tenacity they may be held—be received as satisfactory evidence of that insanity which would vitiate a testamentary act—how repugnant would it be to our sense of justice? Every one of us would revolt against such a doctrine. But if such convictions, proven to have existed in the imagination, lead to the repudiation of the claims of nature and the ties of kinship, and to the establishment of professorships for the spread of spiritualistic knowledge, or to the foundation of a fund for the detection of punishment of witches, or to the diversion of property from those believed by a testator to be witches, or under satanic influences; or for the benefit of such very mortal immortals as Miss Katie King and

her materialized spiritual comrades, recently first certified and then denounced by well known gentlemen in the literary and scientific world; then the delusion—shaping itself into a force, dominating the will, dictating the testamentary act, and turning away the current of feeling from those who should be the recipients of posthumous bounty—becomes a disqualifying cause, and avoids the will made under its influence.

The importance of these cases of delusions which are not connected with personal enmities and do not directly affect testamentary acts, as aiding in the elucidation of the subject of testamentary capacity cannot be over-estimated. It is in them that the tendency of Courts to err is most apparent. Finding that the aberration is given a wider range than such as would merely indicate a groundless personal hostility or some peculiarity eventuating in an inofficious will, the Courts are sometimes led to seek in these cases proofs of a general insanity; whereas they are merely religious or superstitious humors, or highly individualized peculiarities of disposition or character. It is obvious that features analogous to monomania are manifested, and perhaps speaking with pathological exactness, they constitute monomania; but as they fall short of the legal requirements of that condition, as a cause of avoiding a will they must either be regarded as constituting a larger disqualification, or as being what they actually are in contemplation of law, altogether innocuous.

We all know of numerous cases in which

> * * * * "Some one peculiar quality
> "Doth so possess a man, that it doth draw
> " All his effects, his spirits and his powers,
> "In their confluxions all to run one way."

As a great English critic says, quoting the passage from Ben Johnson, "there are undoubtedly persons in whom such humors as Ben describes, have attained a complete ascendency. The avarice of Elwes; the insane desire of Sir Edgerton Brydges for a barony to which he had no more right than to the crown of Spain; the malevolence which long meditation on imaginary wrongs generated in the gloomy mind of Bellingham, are instances. The feeling

which animated Clarkson, and other virtuous men against the slave trade and slavery, is an instance of a more honorable kind." It is safer to regard these, and cognate cases (and indeed it would be gross injustice to do otherwise), as eccentricities, oddities, idiosyncracies—when they are not merely religious or superstitious conceits and humors.

Passing over even such very valuable cases as Banks *v.* Goodfellow, (in which Lord Cockburn has with his great ability and acumen fully considered the whole subject, and critically examined the English and some American adjudications), and many others in England which would well illustrate the proposition now under discussion, I will refer with some little particularity to two causes originating in our own Surrogate's Court, each of which is very instructive, and in which we can perceive the application of the correct rule.

The case of Thompson *v.* Quimby is reported in the second volume of Bradford's Surrogate's Reports. There were several reasons assigned by the contestants in this case, for their attack upon Mr. Thompson's will. Among them was the allegation "that the decedent was laboring under delusions amounting to insanity, and had not a disposing mind during the preparation or at the time of the execution of the will." The instrument was drawn and executed during his last illness, and but a short time before his death. It was a voluminous document, and in it some provision was made for many of his descendants and kinsfolk, mentioned therein; but the bulk of his large estate was left for charitable or religious purposes. The instrument was prepared by eminent counsel, and bears the evidence of very intelligent construction, it being simple in its scheme, although multifarious in its details. The testimony established that the testator was a believer in many superstitions of a vulgar character, and had held them with great pertinacity for many years. Among other delusions, it was claimed that he believed in the black art; that he read and experimented upon the teachings of books of magic; was familiar with disembodied spirits, that he could evoke them "from the vasty deep." or at least, like Owen Glendower, said he could, and that he declared they

came when he did call them; that he could work spells by formula or incantation; that he could cure diseases by amulets or by papers bearing certain cabalistic inscriptions, which were to be worn about the person of the sufferer. He professed to know where Captain Kidd's treasures were secreted at Montauk Point, and actually in company with another, undertook by the aid of a divining rod to locate the exact spot, at which these riches were buried. The experiment was a failure, because as he declared the charm under which he worked was broken by inopportune remarks of his attendant. On one of these occasions, he beheld the apparition of the Devil (he had as much orthodoxy at least as consisted in a devout faith in that personage) in the shape of a large black bull—he recognized the father of evil in his taurine manifestation. It was also alleged that he claimed to be able to see ghosts; that he believed in the supernatural character and significance of dreams; also in the Philosopher's stone, which was to be constructed of materials all of which he possessed except one; that he also believed in clairvoyance, spiritualism, mesmerism, magic glasses; that every person had three eyes, one spiritual and two physical, and that he owned a whistle with which he could get everything he wanted.

This and much more to the same effect was invoked as testimony to prove the insanity of the testator. While the Surrogate did not accredit all that was deposed to in this connection, he did arrive at this conclusion, viz.: "after making every reasonable allowance however, I have no doubt but that Mr. Thompson's mind was impressed with a sincere belief in many absurd notions. There seems sufficient evidence to show that he believed in mesmerism, clairvoyance, divining and mineral rods, dreams and spiritual influences. He searched for the supposed deposits of money by Kidd, and ascribed his failure in two instances to the utterance of certain words by the operator. That he said he saw the Devil in the shape of a bull seems to be well established. He believed likewise in the efficacy of cures for rheumatism and fever and ague as above stated."

On the other side, it was shown that the testator was a very shrewd and intelligent man of business, clear of vision

and firm and decided in his judgments. He was largely engaged in affairs; was connected with moneyed institutions; had succeeded in accumulating wealth by his own efforts; was associated in large and legitimate enterprises of commerce. His general health was good for a man of his advanced age—seventy-five years—although he had suffered injuries from a fall, and had had epilepsy; but these occurrences were not proven to have affected his general capacity to transact business, nor did his delusions appear only after these events occurred—on the contrary the fact was that he entertained them quite as stubbornly before, as after such events happened.

Now there was nothing whatever to connect any of these abberations or infatuations of the testator with the provisions of his will, or with any one of them. Hence, although his mental peculiarities were confined to one class or correlated system of delusions, they did not affect his testamentary disposition of his property, and there could not therefore have been a successful impeachment of his will on the ground of monomania or partial insanity. The very able and astute counsel of the contestants, therefore sought to make these facts a basis of a contention of general insanity. Here were phases of an extravagant and exaggerated belief, widely variant from the ordinary standards, so much so that in their ramifications and details they seemed to include many subjects, allied, it is true in one sense, but in another they were wild fancies, delusions and incoherences, betokening a frenzied condition of mind. Should such a man, who even in his last illness confided to his physician his conviction of many of his notions, be regarded as possessing that calm and sober judgment which would enable him, after taking a deliberate survey of his situation, to make a rational disposition of his estate? His beliefs, his acts, his follies, his diseases, all threw about him the suspicion of lunacy, a suspicion which it was claimed was ripened almost to a certainty that he was not conscious that in leaving his great property to charitable and religious uses and purposes, he was committing an injustice to his posterity, which, were he sane, he would never have contemplated doing.

A careful consideration of the proof in this case will show,

that the testator's condition of mind was either that of a monomaniac, or merely of a person of enormous credulity upon theoretical and abstract subjects, of the value of some of which he attempted to judge by practical experiment. All his delusions were connected with such matters, which did not and could not have any effect or influence whatever on the dispository act of a man constituted as he was in other respects. Mesmerism, clairvoyance, divining and mineral rods, and the whole arsenal of Dousterswivelian tools; dreams, and spiritual contacts and influences, were not in his case original creations of his perverted fancy. They were the results of reading, association, education, and possibly of hereditary and family influences extending through generations. And so the learned Surrogate (Bradford) regarded them. He wisely applied to the circumstances of the case, the inferences to be drawn from the history of such phenomena as constituted the testator's stock of ascribed delusions—referred to the difficulty of the ascertainment of precise conditions of mind, and after adverting casually to the doubtful frontier which separates madness in its various forms and shades from sanity (a topic which Dr. Maudesley has lately elaborated in his comments upon cases lying in the border land, between soundness and unsoundness of mind), he proceeds to consider the reasoning which induces a reliance upon such circumstances as those involved in this case, as establishing a general insanity, and brands that reasoning as fallacious. The conclusion he arrives at is well worthy of citation. He says, "the danger of this kind of reasoning lies in regarding, as indications of radical disease, mental phenomena existing in all ages and among all classes, and dependant upon natural faculties and propensities, or arising from adventitious circumstances of early impression and education." "Being of impression that mere speculative belief does not of itself afford a clear test of insanity, I do not esteem the peculiar opinions entertained by the decedent, sufficient to establish mental derangement.

The Surrogate decreed in favor of the will, and the Supreme Court sustained his decree.

I must leave this case and many very useful and pertinent

suggestions arising from it, to consider before closing some of the illustrations furnished of the views I have been endeavoring to expound, by the recent case of the BONARD WILL. This case is of the very greatest value, for in addition to the facts which transpired in it being such as to present very distinctly the question of the testamentary capacity of one who entertained singular tenets of a so-called faith, it was a cause tried and argued with great skill and unusual ability and one in which the testimony of the medical experts was sifted with a thoroughness and minuteness which elicted much instruction upon the more obscure phenomena of mental disease.

Louis Bonard, a native of France, died at the City of New York, in the Roman Catholic Hospital of St. Vincent, on the 20th day of February, 1871. His life had evidently been an eventful one, for while the testimony leaves in doubt much, and fails altogether to account for more of his antecdent history, it was known that he had been a traveler, and a trader in South and Central America, and that he had been a dealer in sham jewelry; that he came to this country some time prior to the year 1855, and had brought with him money; that he had had losses, but at length became successful, and made investments in real estate, which enabled him to accumulate a fortune amounting at the time of his death to about one hundred and fifty thousand dollars. During the period of his residence in New York he lived as a miser; he preferred the society and companionship of artisans and mechanics. He had no relations in America—nor in Europe so far as was ascertained at the time of the trial—although it has since transpired that he had kindred in France. He was a man of erratic habits, and singular beliefs, the latter of which seemed to intensify as his age advanced. He was a misanthrope, but was possessed of an unbounded affection for the brute creation. The evidence shows that he was a believer in metempsychosis; that he expressed the opinion that there might be an Emperor in any animal he beheld; that he remonstrated with a person who suggested it would be humane to kill an injured kitten, because he averred there was a human soul in the animal's body. But he was a man dex-

terous and cunning in mechanical arts. He constructed machines for various purposes; he had mental resources likewise, and was a reader of books. I think the testimony fairly viewed, established that he railed at religion and priests—that he denounced the Church in which he was born, but nothwithstanding his invectives against it, he died in the peace of the Roman Catholic Church and in its full communion.

There appeared also the fact that Mr. Bonard combined with his ardent love of animals an unbounded admiration for the benevolence of Mr. Henry Bergh. Memoranda were found among his papers, which plainly showed he had some ulterior purpose concerning that gentleman. On the 11th February, 1871, and while he was very ill, he made a will bequeathing a portion of his property to two of his friends. On the 13th he made another, revoking the former, and left all his estate real and personal, to the Society for the Prevention of Cruelty to Animals, of which Mr. Bergh was then as he is now the honored President.

Here was a case bold in its outlines and presenting the salient feature of dogma of a heathen creed, constituting the avowed belief of a man who was born and who died in the Catholic faith. The contestants of his will, who sought to avoid it on the ground of want of mental ability, relied upon the proof of this belief, so unusual among Europeans and Americans, and on that evidence which was offered to show the peculiarities of his character and conduct, as establishing unsoudness of mind in the form of monomania.

The medical experts did not regard the entertainment of the belief in metempsychosis by Mr. Bonard, as evidence of an insane delusion. One of the very learned physicians who testified in the case did not find evidence of "*positive* irrationality" in the circumstance that a man of wealth who lived in one of the poorest districts of the city, in a cheap boarding house, on being taken ill and believing that his soul was about to pass into the body of an animal, left all his possessions to a Society, the only object of which was to protect animals. Another physician of very eminent authority in this class of cases, declared that under such cir-

cumstances the belief mentioned should not be regarded as insane delusion—and for the reason that if the conviction had the dominion over him which a delusion would have had, it would have in some manner betrayed itself in the language or in the provisions of the instrument; that if Bonard held as real matter of religious conviction the belief that his soul would migrate to a habitation in the body of an inferior animal, that that would have been expressed or in some way manifested in the will. The same gentleman says, that "no religious belief, no matter how absurd it may be, is of itself sufficient evidence of a man's insanity;" but what is exactly *religious* belief and what is not, was of course not attempted to be explained.

The opinion of the Surrogate in this case is very able and interesting. He declares that the belief which Mr. Bonard held did not constitute insanity; that "if a Court is to ascribe insanity to a man or a class of men constituting a sect, according to his or their opinion or belief as to a future state, and a particular sect had in fact attained to a real knowledge of that future, the logical deduction would necessarily be, that a major portion of all mankind comprised in all other and different sects were of unsound mind, or monomaniacs on that subject." The learned Surrogate then proceeds to consider the facts of this case not as presenting one of general insanity, but as one in which the only appearance of unsoundness of mind consisted in the alleged monomania concerning the transmigration of souls. But he gives effect to the fact that there was no connection necessarily of this belief with the terms of the will—that there was nothing *in the will* to show that he held the opinions alleged any more than that he was impressed with a belief in utter annihilation after death; nor was there any testimony to associate any provision of the will with a belief respecting the future condition of the human soul. These considerations, coupled with the further fact that "the testator had neither wife nor child, father or mother, or any known, near or remote relatives living, or others on whom he was or felt himself under obligation to bestow his property," induced the Court to sustain the will and overrule the allegation of mental incapacity.

Such was, in brief (in the medico-legal aspect of it), the celebrated Bonard will case, and such was the wise and proper disposition made of it. But one step further however, and the will could not have been properly sustained, had Bonard's relatives appeared to contest it. Introduce one little circumstance into the narration, an additional factor into the computation, and the harmless humor or conceit of Mr. Bonard would have become aggravated into an insane delusion, such as the law would have regarded fatal to testamentary power. For instance (and it points the rule with great clearness), suppose Mr. Bonard, holding the opinion that the souls of men after death infuse themselves into the bodies of brutes, had learned before he made his will that Mr. Bergh had announced (as he did after Bonard's death), that it was his intention to dispose of a part of that which should be left to the Society for the Prevention of Cruelty to Animals by Bonard, in the application of carbonic acid gas to the suffocation of vagrant dogs who should be captured in the midsummer raids and carried to the public pound for execution. Suppose that Bonard, apprehending that after his decease his soul might pass into the body of such an animal (the vicissitudes of whose uncertain city life might lead him finally to such a doom), should have provided in his will against the possibility of the abridgement of his translated life by his own money, at the instigation of his own friend, his chosen posthumous almoner. To consider so is not to consider too curiously—for many wills have contained even stranger provisions than such an one would have been. This would have indicated that the dispository provisions were intended by the testator for his own physical comfort and benefit in another sphere of physical existence, and would have furnished one and the principal element of that quality of unsoundness of mind which the law recognizes as such in cases of disputed wills. Where the grotesque idea is the basis of a belief so sincere as to lead to its incorporation in the will, and to be indubitably the producing cause of its provisions, it affects the testamentary act and is evidence of the diseased condition of mind.

I must resist the temptation to pursue the subject further.

To summarize by way of conclusion the views I have endeavored to present in the foregoing observations:—the law as it now stands and should be administered upon the subject of partial insanity (and almost all the cases of partial insanity are cases of monomania purely), is of comparatively recent origin; it is the product of improved knowledge respecting the diseases of the mind, and of more liberal as well as acurate views respecting the freedom of the will, and the restraints proper to be put upon testamentary powers. It consists of a rule susceptible of application to all cases of the character under consideration; but one which is affected by the general tendency of Courts to revert to antiquated ideas upon topics resting purely in authority; a rule which is liable to be lost sight of in the attempt to find in cases of monomania, evidences of a general insanity. It does not require that to prevent the making of a valid will, a man shall be bias and thwart in all his mental processes; but it is a rule which discriminates in favor of those who are the natural objects of his bounty and affection; and it prevents injury and injustice being done to such, because of a testator's delusions, fancies and irrational prejudices, in cases where they have evidently affected his acts; but it does not deny the testamentary privilege to the man whose eccentricities, beliefs, follies or infatuations may be as absurd and fantastic as the incoherences of a half-remembered dream, provided in all other affairs of life he is of competent judgment, and his vagaries have not led him to do injustice to his kindred, or to harden his heart against those who are the proper objects of his testamentary bounty.

THE
DIAGNOSIS OF HANING,

A Medico-Legal Study.*

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Suicide furnishes almost all examples of this mode of death. Suicide by hanging is most common in prisons, insane asylums, and similar places, where circumstances prove that homicide could not have taken place.

Signs of Hanging.—These may be divided into the symptoms observed up to the time of death, and the condition of the body as observed after death.

The material for the first series of facts has been derived from experiments made upon animals, both by Dr. Faure and the author; from the statements of resuscitated persons; from the observations of Fleischmann (of Erlangen), who experimented in hanging himself; and from the great collection of cases and drawings made by Dr. Jacquemin, chief physician to the prison Mazas.

At the moment when the body, suspended by the cord, is abandoned to its own weight, a great heat is felt in the head; tremendous noises, and as it were a deafening music, ring in the ears; flashes shoot before the eyes; the legs seem to have acquired an extraordinary weight,and then all sensation is lost.

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* Note. This translation of Dr. Tardeiu's paper was read before the Medico-Legal Society of New York.

The translation is not full, but we give it as made and read. The original paper of M. Tardieu was published in "Annales d'Hygiene Publique," January, 1870.—*Editor.*

Sometimes consciousness is lost from the very first moment owing to the occurrence of syncope; a number of resuscitated persons have stated this in the most positive manner, and the author believes it to be more frequently the case than is generally supposed. For the popular opinion that a voluptuous sensation is felt during the first moments, the author finds no authority whatever. Certain persons, however, who have been resuscitated, have described the vague languor which precedes syncope, mistaking it for sexual sensation.

The second, or unconscious phase is marked by convulsions of the face, and then of all the limbs, particularly the legs. This phenomenon was always present in the experiments made upon animals. In the "prison Cellulaire" several of the convicts attempted to suspend themselves from the upper part of the doors of their cells, but their involuntary convulsive kicks against these doors brought immediate succor (which they would rather have done without). The knowledge of this fact spread among the convicts, and those who wished to die undisturbed took the precaution, before hanging, of placing their mattresses so as to prevent their heels from kicking the door. This convulsive period is scarcely ever absent.

Apparent death ensues. It is during this period that relaxation of the sphincters occurs. But the latter occurrence is confined to *a few cases only;* in the very complete and scrupulous observations made by Jacquemin, the passage of a certain quantity of urine and fæces is noted in but two out of forty-one cases.

Death generally comes soon. The author entirely discredits the theory of Ollivier of Angers, that it comes sooner when the cord is placed above the larynx. The animals made the subject of experiment die in from twelve to twenty minutes, very seldom before that period (Faure). In man, there is every reason to think that death usually occurs sooner. A prisoner, named Meignant, at Mazas, hung himself from the bars of the *promenoir;* he had been taken thither at half-past ten, and at forty minutes past ten (the dates are very exact) the custodian of the court-yard found him hanging dead. In another case, a woman was resuscitated after hanging seven minutes. A. Taylor considers this possible, in general, after the lapse of

five minutes. Fleischmann perceived the symptoms of stupor, noise in the ears, and sensation of weight, at the end of two minutes in one experiment, and of half a minute in another; but the application of the cord upon the trachea provoked them immediately. In most cases, and under ordinary conditions, we are entitled to infer that death takes place in about ten minutes. Accounts of very prolonged resistance to death are mostly apocryphal. But, of all facts of this sort,* the following, observed by Drs. Clark, Ellis, and Shaw, of Boston, is the most curious (quoted from Parrot's *These de Concours*, 1860).

"The criminal, aged twenty-eight, weighed 130 pounds, and was very vigorous. He was executed at 10 A. M. It is reported that there was not the least perceptible struggle or convulsion. This shows that death was not caused by rapid asphyxia, which is always accompanied by violent convulsions. The lungs and brain were found in a normal state. The primary cause of death, beyond a doubt, was syncope, due to emotion or to the cerebral excitement caused by the sudden fall through a distance of seven or eight feet After hanging seven minutes, the heart was distinctly heard to beat 100 times in a minute. Two minutes later there were 98 beats; three minutes after that only 60, very weak; in two minutes more the sounds had disappeared. After hanging twenty-five minutes, the body was taken down; there was no cardiac bruit or impulse; the face was purple, though a small space near the ear (where the cord had exerted no pressure) might probably have given passage to the blood. The eyes and tongue were not prominent; the pupils were dilated. The cord had been attached just above the thyroid cartilage. In fifteen minutes more the cord was loosened; after which the body and face gradually became pale. The vertebral column had not been injured. No emission of semen had occurred which, corre-

* "A fact of this sort." Important as is the case described, its true significance is not that which the learned professor, by implication, attaches to it. The case was originally reported as one of persistent irratability of the right auricle after death. There was no doubt, in the minds of the observers, that the criminal was dead when taken down. The auricular pulsation continued for a full hour after every organ of the body, including the brain and cord, had been examined. The "pulsation" in the subclavian vein was not indicative of circulation, but was simply a to-and-fro movement—an oscillatory wave.—*Note by translator.*

sponds with the absence of asphyxia and of spinal lesion. At 11.30 a regular movement of pulsation was perceived in the right subclavian vein. On applying the ear to the chest, it became clear that this was due to the heart; a regular and distinct beat, with a light impulse, was observed 80 times per minute. The thorax was opened, and the heart exposed, without affecting the pulsatory movements. The right auricle was contracting and dilating with regularity and energy. At noon the pulsations were 40 per minute; at 1.45; only 5; the spontaneous movements ceased at 2.45, but the irritability did not disappear until 3.18, more than five hours after the execution. It is infinitely probable (says Parrot) that the sound heard before opening the chest depended solely upon the movements of the auricle.

Effects of Hanging, after Resuscitation.—To elucidate this point the author contributes the following histories, which will serve as types:

Case I.—A man hung himself; was discovered insensible, and was taken to the hospital St. Louis, where he remained unconcious for two days. On the third day he spoke with extreme difficulty, and in a scarcely-audible voice. His memory was completely lost. Incontinence of urine and paralysis of the rectum; severe pains and persistent twitchings of the lower limbs. Respiration embarrassed; moist rales all over both sides of the chest. Catarrhal cough, thick expectoration and fever. A deep, parchment-like furrow upon the front of the neck.

Case II.—A man hung himself among the scenes of a theatre. It is not known how long he remained hanging; but he lost consciousness directly, and remembered nothing until he came to himself in the vehicle which took him to the hospital. When found he appeared quite dead. At the hospital, one hour after the attempt at suicide, he answered with precision and intelligence; his face was swollen, his lips purple, and he spat up some blood. While his head rests on the pillow he suffers nothing, and feels only a little numbness in the head and neck; but, when he tries to raise or turn his head, he feels violent pains; he cannot place himself in the sitting posture without very severe pains in the neck. Speech easy and

natural. Deglutition extremely painful. The mark of the cord in front is on a level with the upper angle of the thyroid cartilage; behind, it is about two fingers' breadth above the spine of the vertebra prominens; it is two centimetres broad, is red, and in parts excoriated; on the right side it is more marked, and presents several violet marblings. No loss of semen during or after the act; no erection observed; no involuntary evacuation. Next day, better; no new symptom; but a certain numbness of the right side of the head, neck, and shoulders remained for a week, to which succeeded a disagreeable sensation of cold, chiefly felt in the night. Sudden violent shoots of pain in the face from time to time. A deep, red line still remained on the right side of the neck after the lapse of two weeks.

Post-mortem Phenomena.—1. Position of the body. Suspension is often incomplete. Among 261 such cases, the author finds the feet recorded as resting on the ground, in 168; the body, kneeling in 42; the extended and lying in 29; sitting, in 19; squating, in 3. Without seeing the drawings it is impossible to get an exact idea of the facility with which one can die without being "in the least suspended." In such cases we must suppose a decided effort of will, with the purpose of abandoning the body to its own weight; or else the momentary constriction of the cord when tightly drawn, causes a rapid loss of consciousness, and the body, becoming inert, bears its weight upon the neck. The danger of experimenting upon one's own body is manifest. If the feet are found touching the ground, it is necessary to remember that this may have happened through stretching of the cord. If the cord is found broken and the body lying beneath, the rupture may have been caused by the weight of the body, or by the strain occasioned by its convulsive movements. This depends upon the position of the knot.

2. Position of the head. It is usually bent forward; sometimes erect, sometimes turned a little to one side, very rarely turned directly back.

3. The arms may fall by the sides, or may rest in various attitudes upon neighboring objects, or the hands may be rigidly grasping the noose, or some other thing.

4. The lower limbs assume various positions, as may readily be inferred. They usually have a violet-red tint, deep in proportion to the duration of hanging.

5. The face during the first moments is pale, almost natural; but it usually soon becomes swollen, and of a violet hue, which increases in depth. This persists for a certain time after resuscitation. If the dead body remains hanging, the color becomes deeper, the eyes are injected and prominent, the tongue very often protrudes, or is locked between the teeth; but the position of the tongue does not depend upon the point of application of the cord.

6. The neck is usually elongated in a remarkable manner. The print of the cord may present various appearances; for the variety of articles used in suicide by hanging is truly extraordinary. In prisons and insane asylums it is impossible, with the utmost care, to prevent the patient from obtaining his instrument. A soft fabric, pressing but a short time on the neck, may leave but slight traces, or none at all. But a furrow is generally present, most frequently above the larynx. The skin of the furrow may be dry, resembling parchement, or of a silvery nacreous aspect; the edges may be swollen from passive congestion, but ecchymoses are rare.

7. The sexual organs do not experience an orgasm; at the period when emission takes place, sensation is entirely abolished; congestion readily occurs in the erectile organs, through the force of simple gravitation; there is no proper erection, and but very incomplete emission.

8. Internal organs. The muscles of the neck may, though very rarely, be the seat of ecchymosis or sanguineous infiltration. Fracture of the cartilages of the larynx or hyoid body is also very rare, and so is the section of the middle and inner coats of the primitive carotid artery. Luxation of the axis or atlas requires great force; it would seem that the knot must be tied under the chin in order to produce this effect. The larynx and trachea generally present a uniform blush on their internal surface; the lungs are usually congested, especially at the base. The gastro-intestinal mucous membrane may sometimes present a degree of redness which might be mis-

taken for the effect of an irritant poison. The brain is not usually congested, but on the contrary is anæmic, inasmuch as the internal jugular veins are not compressed.

Did the Hanging take place during Life?—Important as this question may sometimes be, we nevertheless possess no one absolute and invariable sign which would enable us to answer it in the affirmative. Orfila hung, during twenty-four hours, the corpses of twelve persons who had died of various diseases; and no change was noticed in the appearance of the face; the pallor of death was not replaced by lividity. Orfila's experiment, however, was not made on persons just dead; if it had been, the effect upon the face would doubtless have been manifest. And, on the other hand, even if the suspension takes place during life, the face may be pale if the body has hung but a short time. All the marks left upon the neck may be produced upon the dead body as well as upon the living. Extravasations of *coagulated* blood are doubtless a *vital phénomenon*, but they are of rare occurrence. When they bear a certain relation to the position of the cord, they are of incontestable value as proof that hanging took place during life. Section of the coats of the carotid is exceedingly rare; and, moreover, it may be produced experimentally, after death, as may the luxation and fracture of the verebræ. Infiltration of coagulated blood is a decisive sign that fracture took place during life. Orfila and Donne have shown the presence of spermatic fluid in the urethra of men dead of various diseases, and who were not hanged; in fact, it is present very frequently after natural and constantly after violent death. Evacuation of urine or fæces was noted only twice in the forty-one cases of suicide at the "prison Cellulaire." The presence of bloody foam in the air-passages, the rupture of superficial plumonary vesicles, and the engorgement of both lungs, particularly at their bases, would have a real value as signs of hanging, if they were more constant; and, joined to the absence of the sub-pleural ecchymoses, and the extended tracts of emphysema characteristic of other modes of death, the pulmonary lesions may be considered of great importance in proving that hanging took place during life. The nervous centres present no important evidence bearing upon this point.

THE PROPER STATUS

OF THE

INSANE & FEEBLE MINDED

JOHN ORDRONAUX, LL. D., STATE COMMISIONER OF LUNACY,&C.

GENTLEMEN—The pleasure afforded me by the opportunity of addressing you this evening is greatly enhanced by the reflection that I am permitted to come simply as a member of this society to contribute, in an informal way, something to its field of discussion, and thus to testify to my interest in the good work it is doing. And I trust, therefore, that—in emulation of the very excellent papers to which you have now become habituated to listen, and which already form a volume of authorative *responsa prudehtum*—mine may prove worthy to outlive the period of its delivery and be found deserving of a place in that erudite series. To those of us, also, who have long felt the necessity of some forum like this, in which to discuss those vexatious problems of human responibility which lie midway of natural and positive laws, it cannot be other than matter of inducement to accept any occasion of appearing before a society, whose meetings present a free and unpredjudiced field in which to discuss all questions relating to medical jurisprudence. Here, erecting no invidious wall of inclusion or exclusion to mark the narrow limits of a professional curtilage, it throws open its fields of investigation as a common-appurtenant to both professions from whose syncretism it is born. Here, fettered by none of the Idols of the tribe, the cave, or the market-place, each is invited to bring his contribution before a senate of peers sitting in equity. Here no

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Shibboleth of "*Sic magister dixit*" silences the voice of honest criticism in its efforts to scan the foundations of questionable authority. And here, too, no one trembles at disturbing the dust of tradition, which, by accumulation, is so often mistaken for a mountain of truth, when in fact it is only the sweepings of metaphysical workshops, or the sonorous dicta of men whose opinions have been received as but a fraction lower than divine inspirations.

It is under the shadow of these fundamental principles in the organization of this society, and because I believe it to constitute, when convened, a true forum of justice, with "the constant and perpetual wish to render every one his due," that I am here to invoke its attention to a class of persons not yet recognized with sufficient correctness, in the legal differentiation of the civil status of citizens. In asking you, therefore, to consider with me what are the demands made by our enlightened age in behalf of the jurisprudence of the insane with reference to determining their proper legal status, I desire at the outset to announce that it is not my purpose, nor within the legitimate scope of my present subject, to discuss the medical problems associated with it. The two cannot well be combined in one paper, without either widely extending it, or doing injustice to both. Hence I shall limit myself to the discussion of such points in the history of our common law jurisprudence as appear to me to indicate a want of knowledge of the progress made in the scientific study of insanity, since the rudiments of that common law were first embodied in legal adjudications. And in doing this it will frequently be necessary to animadvert upon that traditional disposition to follow rules of proceedure which were never other than self-contradictory, and are now being steadily overthrown in other directions, in obedience to the stern logic of altered circumstances and the despotism of invincible facts.

Although Christianity is acknowledged to form the basis of the common law, yet it is a painful truth that the latter, in its anxiety to prevent all interpolations of ethical dogmas into its canons from fear of ecclesiasticism, has always in the past resisted to the very verge of inhumanity the enforcement of

moral obligations.* And were it not that the *spirit* of justice was stronger than the *letter* of that law, and Chancery arose as a divine tribunal in England protesting against the cast-iron rigors of the former, were it not for this, society must have inevitably gone to pieces, or continued, as under the Feudal law, one only of brutal masters and emasculated serfs. When I recall the fact, also, that the spirit of the common law resisted that developement of human confidence which is expressed in such fiduciary relations as Uses and Trusts; that it made a husband responsible for the debts of a wife created before marriage, even though that wife might have had a separate estate of her own; that it enabled a husband to appropriate that estate to his own use, just as fast as he could convert it; that it gave him the first and exclusive right to his wife's earnings, which he might squander in indolence as he pleased; that he could chastise her or imprison her in his house; that it denied to women the benefit of clergy; that it absolved a mother from the duty of supporting her infant child after the death of its father, and gave her in turn no remedy for its seduction; that it destroyed confidence and responsibility between seller and buyer by recognizing the profligate doctrine of *caveat emptor*, thus tempting men by impunity to impose upon the weak and ignorant, and to practice upon the pirate's principle,

> "That they should take who have the power,
> And they should keep who can."

When I recall the few traditional canons, the outgrowth of a purely commercial spirit, and which I have selected at random from among many for simple illustration of the binding despotism of proscription, or trace the tangled web of cunning contradictions framed alone in the interests of sophistry, as in the old statutes *De Donis Conditionalibus* and *Quia Emptores*, or the collusive doctrines of *fines* and *common recoveries*—or when such dogmas are cited as part of a *system* of laws too sacred to

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* It is a singular fact in this connection that the very wording of our statute law is intended to exclude all possibility of an equitable construction, whence arose the cynical maxim "*Durum sed ita lex scripta est.*"

Vide Philimore's "Maxims of Jurisprudence," introductory chapter: also Dwarris and Sedgwick on Statutes.

be criticised, then truth compels me to say that, on the contrary, there is every reason to justify us in constantly revising and amending this system, so as to make it conform more and more to the enlargments of justice demanded for all in this age of personal equality. It is no wonder, therefore, that the framers of our State Constitution should have perceived the inherent antagonism between many of the doctrines and all principles of personal independence, and in begining their warfare upon them by abolishing feudal tenures and perpetuities, they have set us an example, which,as a justice-loving people, we have not been slow to follow in our expanding jurisprudence.

It is more particularly on this account, and because we have emerged in other directions from this house of legal bondage, and dare question the authority of its principles whenever they are seen to contravene natural justice, that I now ask your attention in a direction where the sunlight of truth and the redeeming hand of equity have not yet sufficiently penetrated. In the conservatism of opinion which the practice of law is calculated to engender, we are apt to impart undue value to rules of action merely because they have been acquiesced in for years, and a certain prescriptive nobility thereby surrounds them with a halo of specious sancity; whereas, if the reason of the rule be inquired into, it will too often be found to have been local and temporary, and thus in the progress of time to have died out by natural limitation. All municipal law ultimately rests upon natural justice bent to the necessities of our social life. But the former postulate is one which must necessarily vary with the progress of religion and science,just as much as the latter does with the shifting incidents of civilization. Even heathen Rome recognized these principles in the province of jurisprudence, for although the Digest (Lib. 1, Tit. 3, Art. 2, § 3) in its inquiry into the sources of all law, affirms that "*Omne jus aut consensus fecit, ant necessitas constituit aut formavit consuetudo*," yet the Prætor felt himself under obligations to see that no strong moral claims should be overlooked, and to that extent introduced the element of equity into the *jus honorarium* for the purpose *adjuvandi vel supplendi vel corrigendi juris civilis gratia.* Hence the annual edict

and the growth of a system of jurisprudence as elastic as the wants of the people for whom it provided.

In the fundamental proposition from which all government starts, viz., that men are rational beings, and their personal accountability to God or their legal responsibility to society rests upon this fact as a corner-stone, no civil part can logically be assigned to those who are either without natural ability to reach this standard of competency, as, for instance, idiots; those who have not yet reached it, as, for instance, infants; or those who having reached it have deteriorated and fallen back into the ranks of the incompetents, as is the case with persons of unsound mind. Although civilly *in* the State, they are not civilly *of* the State. To such a person the language of Cicero is admirably applicable; "*Neque civem neque peregrinum.*" It is from the universal recognition of these truths that the insane have always been considered as a class of legal infants requiring guardianship, and their rights and their persons deemed objects of legitimate public concern:

The earliest mention of the Insane as a distinct class under the English common law, occurs in the statute "*De prærogativa Regis*," 17 Edw., cap 10. The term there used, than which there is no better furnished by modern science, is that of *non compos mentis*, a term of determinate meaning and limited to persons of unsound mind. (*Ex parte Barnesly.* 3 *Atk.*, 173 & 2 *Eq. Cas. Abt.* 580. But idiots, imbeciles, young children, persons in the delirium of fever—persons when drunk either through alcohol, opium, hasheesh or any other narcotic, are not, in legal acceptance, insane. Legally speaking, no man is born insane, because insanity is here understood to mean a departure from, or perversion of a condition of pre-existing mental health.

In England, from which we have so largely borrowed our jurisprudence, jurisdiction over insane persons was always the prerogative of the Court of Chancery, and exercised there because the proper forum for questions belonging to *conscience*. The common law predicating canons it upon the presumption that all men are sane, cannot treat technically such a case of misfortune as insanity without the intervention of a fiction. A question of lunacy, therefore, wherever courts of Chancery

do not exist, belongs to the equity jurisdiction of common law courts. It is well to bear this distinction in mind at the outset, because it is a cardinal one which cannot be abandoned without leading to confusion in procedure. Even where a person had been tried upon a criminal charge and acquitted on the ground of insanity, and was confined in a lunatic asylum, the English Court of Chancery issued a commission in lunacy, although admitting that it had no power over the person of the lunatic. (*In re Pearce ex parte Clark*, 8 *Jur.* 89; *In re Brooke Coop. C. C.* 54; *cited in Shelford, p.* 114.) It is evident that the latter ruling recognized the fact that the party was already in the custody of a superior jurisdiction, to which alone he was for time being amenable. But had he been decreed a lunatic previous to his offense and confined in an asylum by order of a court of equity, no other tribunal in like manner could have controlled his person or disturbed the custody already attaching to him. While it was proper that the first jurisdiction which seized him should control his custody, it is also plain that the common law courts, having no technical rights over *non-sane* persons, they being out of its pale *ex vi termini*, should deal with them only through their equity powers.

As an outcome from the foregoing case which still represents existing principles of law, our whole procedure in cases of lunacy continues to be tinged with palpable contradictions, based upon an illogical difference between civil and criminal responsibility. Thus it never has been, and never can be, explained on rational principles why, if the state be the guardian in equity of all lunatics, and it has the power of issuing commissions under civil proceedings which shall give it the custody of such persons and the right to detain them in asylums —it cannot rationally be explained why it has parted with that same power, when a person accused of crime asks for its protection against the technical jurisdiction of a common law court. Yet such is the fact. The superintendent of the State Asylum for Insane Criminals at Auburn informs me that, from the history of the majority of convicts sent from our various prisons to that institution there is strong presumptive evi-

dence that these persons were insane at the time of their conviction, and not fit subjects for trial, even if they were for indictment. Such examples have been multiplied in the past through a craven fear lest criminals should escape through the loophole of insanity, an argument not reflecting much honor either upon the composition of our tribunals or the intelligence of our juries, and which concedes, without admitting precisely, what is most important to remember in this connection, that is, that the most erroneous verdicts rendered in the whole history of our criminal jurisprudence have been rendered in cases where insanity was interposed as an answer to an indictment.

The remedy for this consists in enlarging the equity jurisdiction of common law courts over lunatics in all cases, criminal as well as civil. For equity is only natural justice, and cover it as we may with artificial rules of procedure, it will still endeavor to make itself heard through them all. Like conscience, it meets us at every step in life, asking simply to do justice. Hence every honest appeal in lunacy, by whomsoever made, should be listened to as a petition in equity; and in criminal trials, in particular where every presumption favors innocence, and every doubt enures to the benefit of the defendant, the plea of lunacy should be heard and settled before proceeding to try a party whom the State has solemnly declared to be incapable at law of committing a crime.

PAUPER LUNATICS.

The most useless, most unproductive, and most costly class among our pauper population is unquestionably that of the insane. They do little, consume much, and live long. They require more care than the bed-ridden, and are a source of perpetual anxiety to all about them. Yet, as the wards of the State, we owe them custodial care and protection. Nevertheless it is among the most difficult of things to make county officers understand their proper legal status. In their eyes, indeed, they are *neque civem neque peregrinum*, neither citizens, nor yet aliens. They regard them mostly as unprofitable drones, and cannot believe them to be sick and hopelessy deteriorated because they are not in bed, do not miss their meals and do not

require drugs; and in consequence think it their duty to save the county all they can in food and supervision for such persons, by giving them as little of either as possible.

Justice demands that no lunatic, because a pauper, should be thrust among that class in a promiscuous way. It is very doubtful whether any such should be permitted to remain in a poor-house which has not a special and distinct department for the insane. Our statute prohibits the retention of acute cases of insanity in such places. But it does not wholly reach the root of the evil yet. The law is often violated where a great distance is to be traveled to reach a State asylum, and a corresponding expense is to be incurred for transportation by the county. Political economy being wonderfully sharpened on the eve of an election, and insane paupers not being considered of much account anywhere, it often follows that they have to wait the good pleasure and convenience of those who have them in charge, and may thus be detained in poor-houses until their chance of recovery is past, because, forsooth, not being noisy or dangerous, their cases are deemed mild and tractable.

IDIOTS.

We have no State provision for adult idiots. It does not appear whose special wards they are. Hence they drift, like a ship without a compas, hither and yon, finding a harbor at length in poor-houses. These persons are not a wholly useless class. They are and can be made more productive than the chronic insane. I have recommended the organization of an industrial asylum for them, and the subject may possibly receive legislative attention this winter. Needing guardianship full as much as the insane they should be catalogued legally, and placed where their civil rights can be accorded them to the fullest extent of their capacity to enjoy them. Such persons can, in many cases, be made self-supporting in an institution, while they could not endure the hard grapple of life in the outer world, and are ever destined to be crushed beneath the wheels of rival competitors.

IMBECILES.

What is said of idiots applies with equal force to imbeciles. The subject is, however, a much more difficult one to deal

with, because weakness of mind is a term of relative significance, and so long as a party can hobble along mentally, it is held to be an infraction of his personal rights to suggest guardianship. We are supersensitive upon this subject, and tend to become inconsistent with our own conduct in other matters of cognate legal action. For instance, there is not a millionaire in this city who does not keep himself voluntarily under the guardianship of legal as well as financial counselors, without whose concurrence, if not permission, he would hardly presume to act. And although it may be said that he has the right to keep or discharge them at will and is in no sense in their custody, yet when a man has for years been the curator of another's secrets, including his mental dispositions, and knows where that other is weak and where strong, surely he has possessed himself of more elements of power over him than any legal guardian ordinarily secures.

But it is not only the millioniare who needs protection because of his incapacity to protect his treasure. There are a large number of persons in every community whose minds, either naturally weak or dissipated in their powers of concentration and reflection by years of self-indulgent leisure, simply rotate upon the axis of monotony in an atmosphere of vacancy. This class of persons, without being technically insane, are still without mental power sufficient to battle with the ruder contingencies of life. If in the poorer classes and they cannot earn their bread, they become paupers, vagrants, or petty criminals, as the case may be. If in the upper classes, their wealth for a time shields their incompetency from public exposure until some apocalyptic day comes around, in which, attempting to make a contract, or having made a will, or committed some act of social disgrace, their mental condition is inquired into, when lo! it is discovered that they have been all their lives mental paupers, just as much so as those who have figured in poor-houses as public waifs. Many of them, too, have been preyed upon by sharpers of one kind and another, against whom even equity will not intervene nor raise its protecting arm, because, forsooth, such persons not being technically insane, their privilege to be preyed upon must be considered as guaranteed under our

original bill of rights. In other words, there is no protection under our law for adults in body who may have remained infants in mind. If you cannot show them to be insane or intensely extravagant in their personal expenditures, their errors of judgment in selecting a dishonest agent or trustee cannot be inquired into nor that agent made accountable. The *cestui que* trust may have his rents consumed or wasted to any degree by his trustee, and although too imbecile to understand this or make complaint, our courts will hearken to no petition from relatives and reversioners in his estate to have his condition of mind judicially investigated. Thus a jury having on an inquisition of lunacy, ten or more years previously, found an imbecile party of sane mind (whatever this may have meant *quoad hoc*), and the rents of his estate in the hands of a trustee not having been since adequately accounted for, on a petition by relatives to have his mental competency inquired into and the trust vacated, two of our Supreme Court justices have refused on the ground that this was a *res adjudicata* which could not be disturbed. In other words, this is to be interpreted to mean that a man having once been found sane by a jury, even if against evidence to the contrary, it shall never again be lawful in any length of years to inquire whether his state of mind may not have changed, although his acts meanwhile may have sounded to folly in every particular. Under the shadow of this principle if such a party should commit homicide, he could never be allowed to plead insanity, because a jury having found him sane ten years before, the question of his mental condition henceforth is *res adjudicata*. Comment is unnecesary. (*Nihil in lege intolerabilius est quam eandem rem diverso jure censeri.* 4 *Coke*, 93.)

It was long ago felt in England that a great hindrance to the force of equity jurisprudence in matters of lunacy lay not in the want of jurisdiction on the part of courts in reference to these matters, so much as in the absence of prescribed forms having the sanction of legislative enactments. Lord Erskine (*in ex parte Cranmer*, 12 *Vesey*, 445) held that a commission of lunacy was applicable to incapacity from causes distinct from lunacy, and in support of these views cited the opinions of Lord Eldon, in 6 Vesey, 273.

I occasionally meet people in insane asylums whose insanity is so little revealed that their presence there naturally excites wonder in a layman, and yet the foundations of their mental constitution are so fragile, and even tottering, that the least strain carries them over into the domain of self-evident insanity. Before this fall of the temple of thought they pass simply for weak-minded persons, who cannot be trusted in any serious undertaking; who are safe when content to stay in protected corners, and who live mentally upon a low plane of passive reflection. They are receptive and self-centred, but outside of this ill-balanced and capricious. In one of our private asylums all the patients come voluntarily, find a pleasant home, sympathy and medical protection, and are content to remain. At home they would be in perpetual danger. Here they are safe. What is the proper legal status of such persons? My answer is that they have none. So long as parents live who can support them, they acquiesce in their guardianship. When these are wanting, it is an uncle or brother, or any one who happens to stand in an agnatic relation to them. But suppose they have none such. Then they stumble along, at the mercy of any one who induces them to receive him as *prochein-ami*, agent, trustee, or in any similar fiduciary relation. Courts are jealous to protect the rights of infants, and an infant legally means a person under twenty-one. After that their watchfulness slumbers, unless the person be judicially declared a lunatic; but between infancy of mind and lunacy there is a wide margin for weakness and incapacity to flourish in. A strong and educated mind at twenty, though still that of an infant at law, is more capable of self-protection than an adult weak mind at twice that age, to which the law conceds majority and all civil rights. Yet the one who does not need protection receives it, and the one who really needs it does not receive it until insane, which is as logical, precisely, as though the State, in chartering an hospital, should say that no relief should be given to any mild cases of sickness, but only to those which are mortal.

There are various phases of nervous disease in which a man loses self-confidence, hope, and consequently courage, and in which condition he not only willingly submits, but is

is a relief to his mind to be led by others. Is such a man insane? Certainly not. It may be that this present condition will require months for its eradication. Meanwhile he has large business interests at stake. What shall he do? Give a power of attorney to an agent? That involves confidence without collateral security in return. The better way would be to have a legal guardian appointed who should give bonds, receive a compensation, and leave the party's estate without any risk. But under the sway of those ideas of personal independence which are the offshoots of our form of government, we are educated to resist all imputations upon our mental perfection, such as guardianship popularly implies, and most people in consequence would prefer to be called vicious than stupid. Hence they go stumbling on until threatened, if not actual,shipwreck,invokes in their behalf the tutelar protec- of some court of equity, or, pushed into crime, a commission *de lunatico* discloses the fact of their previous and long-established mental weakness. We need to make the doctrine of legal guardianship more popular and more common under our laws than it has yet been made, and to show that it is one of those wise provisions which comes as a necessity to all nations in proportion to the increase of population and wealth, and the formation of a class having leisure and means, without adequate mental power to employ them safely. We need to expand this humane doctrine so as to include within its protection not alone infants and the insane, but also weak-minded persons who are in no sense insane, although needing supervision in the external affairs of life. We have seen that in England it was long ago felt that commissions in lunacy should be allowed to inquire into other forms of incapacity than such as spring from insanity. Did this mean drunkenness and squandering of property alone, or anything indicative of a weakened mind? In order to carry out views like those, which are as applicable here as in England, there is a manifest necessity for recognizing by statutory distinctions varieties in mental incompetency. I know that, at the outset, this seems like a hair-splitting process, a sort of shifting problem in which the exact value of all the factors in this personal equation cannot be absolutely ascertained. But so it

was with the first effort to classify crimes and to define degrees in homocide based upon the elements of malice and premeditation. Yet it has been done, and we now acquiesce in it, for use sanctifies everything. And the same can be done with degrees of mental weakness involving incapacity to manage one's own affairs. Nor is this a new doctrine born from the metaphysical tendencies of our age; nor so elastic as to open the door for aggressions upon the personal rights of the citizen. The Roman law was certainly not pervaded by pinciples of Christian equity; yet it made ample provision for the weak and defenceless, for it made a fine distinction between incapacity arising from mental weakness (*propter animi levitatem*) and that arising from disease. In the former case it placed the placed te party under a *tutor*, in the latter under a *curator*.*

If there be such a thing as natural equity, which it thus appears that even a heathen jurisprudence recognized, it is difficult to understand how a Christian community can refuse to incorporate it in its code of municipal obligations. The dread circumscribing personal liberty of action over one's property by forms of guardianship is as unreasonable now as the dread of ecclesiastical usurpation in secular matters, during the middle ages by the common law pleaders, was excusable then. But *tempora mutantur, et nos mutamur in illis.* In commerce there has grown up a hitherto unknown class of traffickers, known as middle-men or brokers, through whom now the major part of all large transactions are conducted. Few persons trust their own skill enough either in selling or buying to dispense with their services. Yet these persons are not necessarily insane. But *quoad* some particular transaction, they certainly admit their incompetency. Add a few degrees to it, and while still within the regions of sanity, it may be weakness balancing on the edge of inbecility. Now which is best, that a court of equity should be called upon, at much cost, to release such persons from some unreasonable obligation into which they have entered to their detriment, or that the same

* Tutores constitunutur tam masculis quam feminis; sed masculis quidem impuberitus duntaxat; feminis autem, tam impuberibus quam puberibus. Institutes Lib. I, Tit. XII. *de Tutelis.*

court should render the necessity for such a remedy impossible by anticipatory guardianship? In physical life, the prevention of disease is held to be superior to its cure. Why should the same doctrine not hold good in civil relations?

INSANITY IN ITS RELATIONS TO CRIME.

Crime is one of those resultants of mental action in conduct which cannot always be explained under the light of moral liberty or self-interest. For scientific, or even moral purposes, the common test of motive is wholly valueless. Motive is a purely subject factor in the transaction which third parties cannot correctly appreciate. Even the party himself cannot, at times, recognize its presence or explain the *rationale* of its incentive power. Every man has his own moral *vis in-eriæt*, and what might be a motive power to thousands might not be one to him. Properly speaking, there is no motiveless act, and even an impulse is the fruitage of antecedent and preparatory conditions.

Acquaintance with the mental habits of the insane teaches us that they do not lose their evil propensities by becoming mentally deranged, while more often new ones are super-added by the operations of the disease. Those who were liars, hypocrites, profane or unchaste, cruel or brutal before losing their mental balance, still retain those habits, To judge them under the light of criminal responsibility, we must take all these points into consideration, since it is not impossible for an insane man to intend to do wrong, as well as to execute that intention.* The determining factor in this problem, when judicially investigated with a view to determining legal responsibility, is not what the party did, or how he did it, but whether he could have refrained from so doing had he chosen. The fact that he did not apparently make the effort is no more evidence than he could not have made it than it is that he intentionally refrained from making it. Viewed singly, this fact amounts to nothing, since the evidence necessary to

* But a person does not when he becomes insane, take leave of his human passinos, nor cease to be affected by ordinary motives: and when he acts from one of these motives: he does not, by doing so, take leave of his insanity: if he kills some one out of revenge for an immagined injury, he is still a madman taking his revenge.—(Maudsley, Responsibility in Mental Disease, p. 198.)

substantiate it must always remain largely subjective. St. Paul in his own case, explains this antinomy and paradox in mental action, with the accustomed grace and lucidity of his inspired lips: "The good that I would, I do not, but the evil which I would not, that I do. . . I see another law in my members warring against the law of my mind, and bringing me into captivity to the law of sin, which is in my members." Hence moral responsibility is not wholly incompatible with insanity, and even the greatest of European alienists, Dr. Griesinger, doubts whether impulses are irresistible in the insane; for, to quote his own words, "Few of the acts of the insane have the character of forced, purely automatic movements; in mania, also, according to the testimony of individuals who have recovered, many of the wild desires could often be restrained; the criminal deeds of the insane are not, generally instinctive."—(*Mental Pathology, Sydenham Soc., Ed.* § 47.) These views are fully corroborated by Dr. W. A. Hammond, in his paper on Morbid Impulse, read before this society in May, 1874, in which he says: "The morbid impulse to injure others in property or person can be very often restrained by the effort of the individual who experiences the impulse. Many instances of this kind have come under my observation, and they are frequently overcome by that wholesome fear of the law and the influence of judicial discipline, which even the insane, especially those whose only manifestation of mental aberration consists in morbid impulses, are generally capable of appreciating."

The foregoing opinions of experts show plainly enough that moral responsibility is not necessarily extinguished by insanity, and that an individual is bound to resist his evil impulses as far as he can, in mental disorder as well as in mental health. Still all this may co-exist with entire *criminal* irresponsibility, although legal responsibility, meaning accountability to the State, may continue; for the State may, and constantly does, deprive an individual of his personal liberty, as in the case of the ordinary insane, whenever there is danger of his misusing it. And in the case of insane wrongdoers, who have thus shown their evil propensities with or without power of self-control, the State cannot punish them

by imposition of either the bodily or mental penalties incident to a penal institution, because they are permanently in the same condition, *mentally*, that an ordinary prison convict is, physically, when attacked by disease; that is to say, all punishment must be suspended during this intervening state, and the person treated, not as a criminal, but as an ordinary sick man in a hospital. Hence incarceration in an asylum is all that the State can legally do in the matter of disposing of its insane malefactors; and, in fact, it is all that it is necessary for it to do, both morally as well as medically, in order to protect itself and vindicate its authority. Bodily penalties—meaning enforced labor, or a sentence of capital punishment causing mental terror by anticipation of a violent death—are things not to be entertained; for they would only further irritate and derange an already unbalanced mind, and put the State in the attitude of a vindictive avenger, instead of a guardian of the weak and suffering, and a protector of all. From the personal testimony of the insane in our own criminal asylum, I can affirm that their detention is in itself a punishment of which, in the majority of cases, they are keenly conscious, recognizing it as something more penal than medical, and, more painfully still, comparing its indefinite duration with the determinate periods of the convict for a term of years. Hope is the anchor of the soul in all human beings alike, whether sane or insane, and there is no more painful spectacle in this world than that of those whose minds, shaking off the eclipse of insanity, awake to find themselves in the midst of insane criminals, with no definite day of release. Let those who think the insane malefactor is not sufficiently punished by being detained in a criminal asylum, visit such an institution, and converse with some of the old and more rational inmates, and they will be sastified that the dread of the plea of insanity as a door of escape for criminals from punishment is a popular myth, born of ignorance. There is no class of persons who pay such a heavy penalty to disease as the insane, and if, as the old maxim runs, *furiosus solo furore punitur*, it is surely the duty of society not to add a feather's weight of pain to these poor, cross-bearing sufferers.

The difficulty of dealing with a problem of this kind arises

in proportion as we undertake to apply to its solution the technical rules of law, for these rules were intended to govern the actions of sane men alone; and when we discover an element of insanity in any action that is undergoing judicial investigation, then not the common law, but the equity jurisdiction of the court must be applied to such a case precisely as it would be to any similar occasion of hardship or misfortune in a civil transaction. This is the first point to be considered in dealing with a question of insanity. Next comes that of methods of ascertaining the fact judicially.

I am not of those who believe that insanity is a physical or mental condition, or combination of both, which, in the majority of instances, a body of intelligent laymen, at short notice and upon a limited observation of a person, can determine as well as two or three experts. One might with as much accuracy believe that a canal boatman, because a navigator, could give a correct opinion upon a difficult question touching the navigation of an Atlantic steamer, or that a drug-broker or apothecary's clerk could skillfully administer drugs, because, forsooth, he deals in them. Insanity is no such patent condition as that view of it would seem to authorize.

Insanity is a fact which, like many others in nature, is so only to those who can appreciate the interdependent and shifting relations of its many constituents. All facts are alike unknown and unknowable to the ignorant, until they have first mastered the rudiments out of which such facts are compounded. "No man," says the philosophic Emerson in his own trenchant way, "can learn what he has not preparation for learning, however near to his eyes is the object. A chemist may tell his most precious secrets to a carpenter, and he shall never be the wiser—the secrets he would not utter to a chemist for an estate." This is a universal law, and it is idle, therefore, to talk about *actinism*, or bleaching to a man who, although he has seen daylight all his life, has never known the composition of that light. Put that man upon a jury in a case where a question of photography, or the deterioration of drugs by exposure to sunlight, is the issue, and what can he know of these facts, although each is a fact relating to common daylight only?

For, after all, a fact has no quality, no name and no value distinct from the mind which observes it; and to him who does not appreciate it, it does not exist. To the blind man this is a sunless world, to the deaf man one of silence unbroken—yet both may be intelligent men, and competent to sit upon a jury in any of our courts. But would you take their opinions upon a question of color—say the genuine or spurious character of a costly painting—or upon a question of sound—say the uttering of a threat or a slander? Yet these are but *facts*, and according to our legal traditions any intelligent jury can determine the legal value of fa ts. Why, then, call experts at all? Or, if granting that there will be cases where such professional experience is needed to enlighten the jury, why allow that same jury to decide by ballot the real value of that professional judgment? If they are competent to do so, they do not need experts, for they are experts themselves; if they are not competent to do so, then they have as little right to pass upon such a question as one of law, for it requires *special* knowledge in either instance, and no one pretends that they have any.

The history of both our criminal as well as our lunacy jurisprudence points constantly to one glaring fact, viz, that the most erroneous verdicts—verdicts against facts, commensense and evidence—have been rendered by juries in civil and criminal issues of insanity. Adverting to this subject, the Superintendent of the State Lunatic Asylum at Utica, in his annual report to the Legislature for 1872, uses the following words.

"Of those discharged, *fourteen* were not insane when admitted. Three of these were cases of feigned insanity to escape punishment for crime, and the rest were drunkards, whose vagaries and violence were mistaken for insanity. All these were committed under public authority, and on certificates of insanity on trial by jury." I need only mention the cases of Sickles, Cole, MacFarland, Pierce and Montgomery to illustrate this point. And I could name others who have never been tried, but who, if they had, would have been convicted, as this latter was, although manifestly insane. To err is not only human, but judicial also, as the 3,000 cases in Mr.

Bigelow's volume of over-ruled cases, and the 50 volumes of our Court of Appeals' decisions show. But when a system of procedure shows itself as notoriously certain to err as the trial by jury in issues of insanity, it would seem to be time that men asked themselves whether something better cannot be devised.

The trial by jury is not founded on any principle of law. It is simply a method of procedure resting upon a gratuitous assumption that in criminal and other issues twelve men of the vicinage will administer justice more impartially than one or several disinterested judges. The fallacy of this doctrine is seen every day in the necessity either of changing the venue, which is a practical imputation upon the impartiality of the whole county in which an issue is to be tried, or in sifting its whole male population by challenges of all possible kinds, until twelve men are found who do not read newspapers, who are not in the current of living society, whose judgments are never spontaneously awake, and who, while in the world, are not of it.

By reverting to history we shall find that the trial by jury was born as a civil safeguard in times of political tyranny. It is of service, therefore, against encroachments upon personal liberty and where issues involving matters of common knowledge are raised. But there is a limit to its utility, and that limit will be narrowed in proportion as the character of intelligence of such a tribunal continues to fall.

In civil practice there has long been a growing disposition to dispense with trials by jury, and the constitution of 1846 recognized this advancement in the philosophy of procedure by allowing a party to waive this constitutional privilege in certain cases. And the same thing is destined to take place at no distant day in criminal trials, for even while I write I learn that a case of murder has just been tried in Connecticut without a jury. Can any one doubt that the three upright judges who presided there administered justice in every sense as impartially as twelve unlearned laymen, swayed by sentiment and the glamor of forensic oratory would have done? Hence, in an issue of insanity, involving the necessity of the most intricate knowledge of the human body as well as the

mind, in order to decide it, will it be said that the utterly ignorant are as competent judges as the skilfully learned? If so, then why not allow juries to decide questions of law as well as fact? Law is only a system of human facts balanced in their relations to individuals by principles of natural justice, applied under social necessities. If a juror, *virtute officii*, becomes omniscient, a question of law must be as easy of solution to him as one of fact, and a charge from a court becomes wholly unnecessary. Must *rules* of law then, (for this not a *principle*), never keep pace with the progress of other sciences? Shall the justices in eyre continue to go around their circuits in ox-carts, *more majorum*, when they can go by railroad? Shall deer in parks owned by rich men continue non-distrainable because so at common law, when a poor man's sheep and swine may be taken upon execution? If we can show that the tendency even of any rule is towards error, should not that be sufficient reason for endeavoring to rectify it? Shall we say that in all legal inquiries involving as their consequence restrictions upon personal liberty, a jury should be the ultimate arbiter? If so, then nine-tenths of all our insane are illegally committed to asylums because not sent there by the verdict of a jury. No one deems a jury trial indispensable in a case of civil lunacy. Why should there be any difference, then, in one of criminal lunacy? In either case the State controls the custody of the individual, and if the State can permit a party to be deprived of his liberty in the first-mentioned case without a jury trial, why can it not in the second? Insanity is not a crime. No insane man, malefactor or not, owes the State any penalty. He is not, and cannot be, by her own solemn guarantee, a criminal. Then why insist upon trying him precisely as if he were?

RECENT LUNACY LEGISLATION IN NEW YORK.

The status of lunatics before the common law was not only peculiar, but utterly at variance with all conceptions of natural justice. Besides being disfranchised, they might be made the subjects of fraud or duress, and yet were not allowed to plead their mental condition in nullification of acts committed by them while *non compos mentis*. In the reign of Edward III., as Blackstone informs us, "a scruple began to arise

whether a man should be permitted to blemish himself by pleading his own insanity; and afterward, a defendant in assize having pleaded a release by the plaintiff since the last continuance, to which the plaintiff replied (*ore tenus*, as the manner then was) that he was out of his mind when he gave it, the Court adjourned the assize, doubting whether, as the plaintiff was sane both then and at the commencement of the suit, he should be permitted to plead an intermediate deprivation of reason; and the question was asked how he came to remember the release, if out of his senses when he gave it. Under Henry VI. this way of reasoning (that a man shall not be allowed to disable himself by pleading his own incapacity because he can not know what he did under such a situation) was seriously adopted by the judges in argument (39 Henry VI., 42) upon a question whether the heir was barred of his right of entry by the feoffment of his insane ancestor. And from these loose authorities, which Fitzherbert does not scruple to reject as being contrary to reason, the maxim that a man shall not stultify himself, hath been handed down as settled law, though later opinions, feeling the inconvenience of the rule, have, in many points, endeavored to restrain it." (Comment'ts Book, 2d p., 291; Comber'h, 469; 3 Mod, 310.)

I have purposely quoted the above in full, in order to show how a principle of gross injustice could, after *serious* meditation, by a bench of judges, become the *settled* law of an enlightened country, and remain so for over two hundred years, in the face of the remonstrances of such an authority as Fitzherbert, as well as the daily evidence of its wrongfulness. To attempt to enforce such a principle at this day would be considered simply brutal, and yet it was none the less so then, because the question at issue was not one involving nice degrees of scientific differentiation in detecting mental maladies, but the general proposition of whether an insane man, fraudulently enticed into any contract detrimental to his interests, because having, in fact, no legally assenting mind, should be permitted to show that fact as a reason for nullifying such a contract. Had the party been a *feme covert*, or an infant, however near twenty-one years old, and however intelligent in mind, the judges would not have hesitated in admitting the

appropriate plea in either case. But as for a lunatic, he was evidently an outlaw whom any one might defraud, if not destroy. Alluding to this subject, Chancellor Kent very emphatically says, that "the principle advanced by Littleton & Coke, that a man shall not be heard to stultify himself, has been properly exploded, as being manifestly absurd and against natural justice" (*Comment'ts, vol. 2, p* 594.)

Now, if a rule, "manifestly absurd and against natural justice," was the settled law of England for two hundred years, is it unreasonable to infer that otherr ules may be found which are amenable to the same criticism? And if found to be so, shall we limit ourselves to the right of discovery alone, yet make no change, because, forsooth, the error is settled law, and by lapse of time has attained to a prescriptive right? Shall we go on wearing the Chinese shoes of conformity, and the prison uniform of the ancient pleader whom Cicero so well describes in his own day as "leguleius quidam cautus et acutus, praeco actionum, cantor formularum, auceps syllabarum." (*De Orat.* 1:55.)

Or shall we not endeavor to make a change, both *in melius* as well as *in aliud*, by re-casting the rule in the mould of modern law, and shaping it in obedience to a more logical conformity with the principles of reason and natural justice? Surely this would seem to be the proper duty of those who believe that progress in adaptation is an element of strength in law which in no wise derogates from its stability, since its proper mission is to enlarge rather than restrict the sphere of our civil rights and remedies.

"It is one of the noblest properties of the common law," said Chief Justice Gibson, "that, instead of moulding the habits, the manners and the transactions of mankind to inflexible rules, it adapts itself to the business and the circumstances of the times, and keeps pace with the improvement of the age." (*Lyle v. Richards*, 9 *S. and R.*, 351.)

Having always acted under these convictions, I was particularly struck with the need of applying them in practice, when, upon assuming the newly-created office of State Commissioner in Lunacy, I found the whole system of our Lunacy statutes a mass of confused enactments, to which, in the past

eighty years of our civil existence as a State, no one had apparently given any attention. Here was a dismembered and disparted body of laws scattered through different titles of our statutes, with every principle of unification ignored. They had been allowed to rest wherever they had fallen in the midst of annual enactments, so that in several cases almost identical provisions had been re-enacted in evident oversight of their previous existence. Impressed with the necessity of giving *form* at least to such a dispersed body of laws, I ventured to suggest to the Legislature last year the need of their revision. That suggestion was adopted, and the duty of carrying it into effect assigned to the Attorney General and State Commissioner in Lunacy. Accordingly, a report * was presented by us upon this subject, which was passed among the general laws of the year, and designated as Chapter 446 of the Laws of 1874. Besides many verbal amendments intended to harmonize the legal effect of enactments passed at different times, several new and important provisions were introduced relating to the following topics, viz: The commitment of the insane of civil process; the commitment of the insane by criminal process, and their discharge; the transfer of insane criminals from penitentiaries to the State Asylum at Auburn; pleas of insanity by persons under indictment for specific offenses; limits of inquiry upon commissions of lunacy; accounts of guardians and committal of lunatics; changes in the organic acts of certain asylums with reference to uniformity in the powers of their managers; the authentication of official records from the office or the State Commissioner in Lunacy, and providing for uniform returns of statistics annually from the Superintendents of poor-houses and county asylums containing insane paupers

The first of these wrought a radical change in the method of committing lunatics under civil process, and secured, it is believed, the best legal safeguards which can be obtained for all classes of citizens against the possibility of illegal commit-

* Vid. "Report on the Codification of the Laws relating to the Insane, with proposed Amendments thereto, &c., by Daniel Pratt, Attorney General, and John Ordronaux, State Commissioner in Lunacy. Presented to the Legislature March 31, 1874."

ment to an insane asylum. The public mind has been greatly exercised by apprehensions in this particular, which were, in the existing loose state of our procedure, well calculated to be magnified out of all reasonable proportions. Several cases had occurred where habitual drunkards had been committed to asylums upon erroneous certificates of lunacy, who had afterward been summarily discharged by *habeas corpus;* and the public, not being able to discriminate between the *post hoc* and the *propter hoc*, had naturally enough concluded that there might be an element of fraud and collusion in such instances, when, in fact, these cases were simply errors in judgement, likely to occur occasionally under the best of administrations. We have seen, in the reports of the State Lunatic Asylum at Utica, elsewhere quoted, that *fourteen* such cases happened there in one year. But not finding their way into courts, nor being served up in the form of a journalistic salad, they attracted no notice, and did not disturb the rhythm of the public pulse. In order, however, to silence all future apprehensions upon this subject the first provision of the new law was accordingly drawn up with reference to two important considerations, viz. : that of celerity in action (a violent and dangerous lunatic requiring immediate restraint), and that of a subsequent legal adjudication of the propriety of such confinement. The five days' detention allowed as a measure of physical safety to the lunatic and a safeguard to the public, is in the nature of a preliminary proceeding or inquisition into a statement of facts not yet legally established, and the commitment is complete as to the right to *detain*, but inchoate as to the right to retain. This is analagous in procedure to the arrest of a disorderly person in the streets, who may be detained a certain length of time, but if no one appears to prefer charges against him, must be discharged.

The approval, by a judge of a court of record, as required by the statute, is the final step necessary to give a perfect legality to the original commitment, provided that approval occurs within five days after the admission of the patient into an asylum. In order to save himself harmless, the Superintendent must see to it, therefore, that no insane person, though brought upon proper medical certificates, is retained

beyond five days, without a judge's approval to such certificates. He can exercise no discretion in the premises, since the statute allows of no exception to this provision. The statute further establishes some standard of qualifications for medical examiners in lunacy. However imperfect this may be, it is still better than none, and will tend to exclude a large number of incompetent and irresponsible persons from the right of giving medical certificates of lunacy, as was formerly too often the case.

PLEAS OF INSANITY BY PERSONS UNDER INDICTMENT.

Of the other new provisions above enumerated it is not at present necessary to speak, with the exception only of that which relates to *pleas of insanity by persons under indictment for felonies.* Some doubt having been cast upon its constitutionality by the learned President of this Society, in a paper read by him before the Neurological Society at its meeting in January, I desire to thank him for the opportunity which he thus affords me of stating the moving considerations which led me to introduce it into our new Lunacy statutes. This new provision was not drawn hastily. It was submitted to the criticism and received the approval of one of the Judges of the Court of Appeals; was fully discussed before the Judiciary Committee of the Senate, and approved both by it and that of the Assembly without amendment; and I have, since it went into operation, received judicial testimonials of its efficiency, as a safe and inexpensive method of determining an issue of insanity, which otherwise, and if intermingled with the ordinary trial of an individual, might require many days for its determination, or upon a disagreement of the jury need to be repeated.

Availing myself accordingly of the opportunity of this occasion, I shall now endeavor to show how, under technical rules of pleading, great injustice was heretofore done a defendant desiring to interpose the plea of insanity as an answer to an indictment, while at the same time, and at a later stage of the trial, a departure in pleading had to be permitted in order to purge away the wrong thus committed. In doing this, I shall crave your indulgence, if it becomes necessary, to begin with certain fundamental propositions in the law of

pleading known to you all, but which must be stated here as my postulates.

A plea being an answer to certain allegations, must rest upon presumptions which are rebuttable, otherwise no issue can be joined. For in every issue there must be an affirmative and a negative, but a presumption is not an affirmative ; it is only an inference. (*Priddle and Napper's Case, XIth Coke, fol.* 8.)

It is a presumption that all persons are innocent until proved guilty. but if this presumption be not rebuttable, then by what right can we put any party upon trial ? If the presumption be *conclusive, de facto*, it becomes *de jure* a bar to any conviction. But the possibility of its rebuttal being always conceded as an inference drawn from experience, proof is admitted to negative such a presumption, and issue is joined not upon the presumption, but upon the facts which the proof elicits.

Again, it is a presumption that all persons are sane until the contrary is proved. But if this presumption be not rebuttable, how can the contrary ever be proved ? Hence no proper issue can be joined upon a question of insanity, since both affirmative and negative rest upon a matter of inference not yet judicially established to be a fact. In such cases we have to invent a fiction before we can suspend the operation of the foregoing presumptions and try an issue either of guilt or of insanity. On this point of resorting to fictions, in order to determine the true from the apparent place, which a rule of law actually operative should occupy, Mr. Maine says, very truly, that "there can be no doubt of the general truth that it is unworthy of us to effect an admittedly beneficial object by so rude a device as a legal fiction. I cannot admit any anomaly to be innocent which makes the law either more difficult to understand or harder to arrange in harmonious order. If the English law is ever to assume an orderly distribution it will be necessary to prune away the legal fictions which, in spite of some recent legislative improvements, are still abundant in it." (Ancient Law, chap. 2.)

Under every system of jurisprudence it has been a recog-

nized principle, founded in natural ethics, that an insane person can *not* commit a crime, and as a corollary to this, that a person while insane cannot even be tried for any offense, although committed previous to his insanity. Our own statutes reaffirm these principles in the following words, viz. :

"No act done by a person in a state of insanity can be punished as an offense ; and no insane person can be tried, sentenced to any punishment, or punished for any crime or offense while he continues in that state." (*R. S. Part 4th, ch.* 1, *Tit. 7th*, §2.)

Under the shadow of all the foregoing principles it does not appear how, previous to the passage of the act of 1874, a person under indictment for an alleged crime could legally, and in strict obedience to the technical rules of pleading, offer insanity as an answer to such indictment, because,

1st. By pleading the general issue he admits that he is justly amenable to the criminal jurisdiction of the court.

2d. By pleading the general issue he excludes himself from the category of those whom the statute above recited removes from the sphere of legal responsibility, and puts himself like any ordinary defendant upon the country.

3d. By pleading such general traverse he tenders issue upon it in manner and form as alleged against him, and gives color to the presumption that he is like other men, *sane*, the very fact which he wishes to contradict, and he is, therefore, *ex vi termini*, estopped from afterward offering the special plea of insanity by way of abatement to the indictment.

4th. By pleading the general issue he admits that if the allegations in the indictment are proved he is legally guilty.

Such are the logical consequences of pleading the general issue, as intended by the philosophy of a legal defense to an indictment. Now, if we examine the rules of pleading which have been built upon them we shall see the truth of the allegation that no legal way of pleading insanity as an answer to an indictment exists at common law, and that in consequence a statutory enactment was needed to cover this deficiency in our criminal procedure. The reason of this

assertion will more particularly appear when it is remembered that

1st. It is a rule of pleading that the general issue cannot be pleaded together with a special plea, since this would constitute duplicity.

2d. It is a rule that a party having once pleaded generally cannot afterward plead specially, because such a plea is not divisible. (2 *Swan*, 626. 2 *Yerger*, 248. 7 *Cox*, *C. C.*, 85. *Wharton*, *C. L.*, 535. 8 *Smede & M.*, 587.)

It follows from these conclusions that, while the statute assured to an insane person immunity from punishment for an alleged crime, he was practically debarred from presenting this defense in a legal way, by rules of pleading which contradicted themselves at different stages of his trial, since they first compelled him to enter upon his defence as though sane, and afterward permitted him to make a departure in pleading, in order to show that he was not what his plea of the general issue had first conceded him to be. If this be not ambiguity in pleading, it would be difficult to say what is.

I am not unaware, however, of what may be said in reply to this, viz. : That if a party can show that he *is* insane at the time of trial, we have a statute by which that question may be decided *in limine*. This is undoubtedly true. But why should a party be limited to this privilege only upon appearing to be insane at the time of his trial, when the statute guarantees him immunity from all criminal responsibility for acts committed at any time previous to trial ? The fact that he appears insane, then certainly proves that the insanity must have been lurking in him for some time previously, and why should he not be permitted to show how far back in time that insanity extended ? Lord Cottenham *in re* Whittaker, said, "that the law *required* and the jury were *bound* to ascertain the period at which the lunacy began." (4 My. & Cr., 441). Insanity is a disease—a disease not of rapid or sudden, but of slow production, and its stages of incubation are so insidious that it is only by examining a wide extent of time, and weighing many groups of symptoms, that any rational judgment can be formed upon a given case. Hence, taking the time which ordinarily elapses

between the commission of a crime and the trial of a party who is immediately arrested upon its occurrence, and if that time does not exceed three months, it may with safety be affirmed that such a person, if he appears to be insane at the time of his trial (and this insanity is not the immediate result of an accident like a brain fever, supervening upon a wound of the head, or of *mania a potu*, arising just previous to his trial), then it may be safely affirmed that the insanity had previously existed, and actually included the time within which his alleged crime was committed. A retrospective inquiry should always be made in such cases, for in England in several instances inquisitions of lunacy have been quashed because they did not carry the commencement of the lunacy as far back as the evidence warranted. (*Shelford, pp.* 124–25; *& Ca. Ci.*)

If, therefore, as we have always been taught to believe, the sole object of putting an indicted party upon trial is to determine whether on a certain day on which he is alleged to have committed a crime he was in fact guilty or not, in manner and form as set forth in the indictment, why should he not at the outset be permitted to show that on that very day he was *non compos mentis*, and thus specially excluded by statutory provision from the sphere of criminal responsibility? If he can show that, he can show that there was no ground on which to rest an indictment; and the labor of the prosecution in proving their side is thus rendered nugatory, and therefore superfluous. The party has a right to demand that his plea in abatement shall be heard, for he cannot plead guilty, which he is not; he cannot plead the general issue, for that admits that he recognizes himself to be within the criminal jurisdiction of the court. His only proper way is to plead in abatement; because if successful, then he cannot be compelled to answer the indictment. (1 *Archbold, Waterman's Ed.* 359; *Note to Pleas in Abatement*, 2 *Hale, P. C.* 238; 10 *East.* 88; 8 *Smedes & Marsh*, 587.)

Having thus shown the need of such a provision in pleading insanity when that constitutes the sole answer to an indictment, I now come to the consideration of the form in which that provision is enacted, as also its legal consequen-

ces. Necessarily, it must be pleaded, if at all, upon arraignment. At this point I find that our honored President takes issue with me in the paper hereinbefore alluded to, in the words following, viz. :

"Suppose the case of a person really insane, but not apparently so—a case so obscure as not to be apparent at sight, or without careful and intelligent examination, and such person is charged with crime, and upon arraignment, with or without counsel, makes no plea of insanity. If with counsel, suppose them to be ignorant of the fact of the actual insanity ; and of course if without counsel and really insane, he cannot be considered to have waived or lost rights by neglect to plead."

To the first of these propositions I reply, that by reason of the ambiguity of the term "apparently," it cannot be admitted as a postulate in the argument. We cannot speak of a man as "really insane" who has never presented any appearance of it in speech or conduct. It is mere conjecture, and less even than a presumption. We do not know it as a conclusion from facts, for *de non apparentibus et de non existentibus eadem est ratio*, consequently we have no right to predicate it. But not to chop logic, I will reply as nearly as I can to what I conceive to be the purport of the inquiry—viz., that knowledge and experience of insanity show that no man is ever really insane without revealing it in some way to those who are competent to interpret his acts and his condition.* He may not appear so to a crowd in a court-room, or to a judge who sees him at a distance and has no knowledge of the act or acts he has committed ; but no judge would permit a party to be tried without counsel, and no counsel deserving that name would undertake a case without informing himself of

* One of the most striking illustrations of this truth occurred during the celebrated Freeman trial at Auburn, when Mr. Seward, as counsel for the defense, asked the late Dr. Brigham, Superintendent of the State Lunatic Asylum, whether he could tell an insane person by his looks, to which he replied that he could. He was then asked whether in the crowd in that Court-room he saw any person who was insane? Dr. Brigham cast his eyes over the large audience and although a stranger in the place, immediately pointed out a man as insane, who proved to be a harmless lunatic long resident in the town. He was quiet and attentive to the proceedings, and there was nothing either in his dress or manner to attract observation.

all its particulars. And since the passage of this statute, no judge would compel a party to plead the general issue when informed by counsel that he had reason to believe the plea of insanity might be interposed, and asked time to inquire into the particulars of his client's case. I am assuming the strongest possible case that can be brought up; as for instance, where a party being called to plead and having no counsel, one is assigned him in court. For precisely such a case has happened, and through it I am convinced that we shall be able to discover the great use of the provision now under discussion.

At the last December term of the Court of General Sessions in New York, an Irish woman, named Isabella Jenish, was called to the bar to answer to an indictment for killing her infant child, Carrie Jenish, by placing her upon a hot stove. She had no counsel. Judge Sutherland, then presiding, assigned one of our most eminent criminal lawyers, Hon. Chas. S. Spencer, to defend her. Mr. Spencer had never seen her before, but from the facts alleged in the indictment, and a short conversation with her and her husband, he learned enough to convince him that she probably had a complete defense in the plea of insanity. He accordingly offered it under the statute, and a commission was appointed, of which I was a member. After hearing much testimony, and making a careful personal examination of the defendant, we found that she had been an epileptic for nine years previous to the homicide; that she had had an epileptic convulsion less than an hour before placing her child upon the stove, and that she continued within that same epileptic circle for over thirty-six hours. Was this not insanity enough to work irresponsibility? She was accordingly sent to our State Lunatic Asylum at Utica. The case of Kate Stoddard, in Kings County, is another instance of the utility of this provision. She would not have appeared insane to the crowd, doubtless, and has talked over her defense with me in a way to show that she understood fully the weight of evidence necessary to convict her. Yet, since her admission into the criminal asylum at Auburn, she has steadily developed her insanity, and has recently become maniacal Still another case, that of Matteson

occurring in Oneida County, in June last, has resulted in the finding of insanity and the sending of the defendant to the State Lunatic Asylum. Now, suppose all these cases had been tried before a jury, what better result would you have secured? Perhaps they would have convicted Mrs. Jenish, precisely as a jury erroneously convicted Montgomery, in Monroe County, and a commission was afterward sent by Governor Hoffman, of which I was a member, to pass upon his mental sanity, and upon our report the Governor sent him to the Auburn asylum. This man's trial cost several thousands of dollars, and did not, after all, dispose of his case, while the commission only cost a few hundreds. The same thing would have happened with Isabella Jenish and Kate Stoddard had they been convicted. Suppose, on the other hand, the jury should have acquitted all the above-named persons on the ground of insanity? What then? Why, they would all have been sent to the place where they now are, the criminal asylum at Auburn.

The luxury of trying an insane man by jury is rather a costly, as well as an unnecessary way of showing our regard for Magna Charta, precisely as burning up half a city on the Fourth of July is rather a costly way of reminding American citizens that their forefathers burnt gunpowder in order to secure their political independence. The cases to which this statutory provision was intended to apply are well represented in those already cited, being cases of such palpable and unmistakable insanity that no advantage could accrue either to the defendant or the people by a jury trial, or appealing from the decision of a commission, when the end in either case would be similar, so far as dooming the insane man to commitment in an asylum.

The further construction of the proposition of our distinguished President, that a man's insanity may not be discovered until it is too late to plead it, is not, in my opinion, a correct one. For his counsel can always have an opportunity to inquire into its likelihood whenever any seeming reasons exist for so doing. If he neglects to do his duty the statute is not to blame. Let him ask for time, and if the Court declines to grant it, then let the responsibility fall upon the

Court. If his client is afterward convicted he can move either for a new trial, on the ground of newly discovered evidence, and have his client's sanity tested, or if he be under sentence of death he may apply to the Governor for a similar process of inquisition, as was done in three cases with which I was personally connected—viz.: the Buckhout case, in Westchester County, in 1871; the Montgomery case, in Monroe County, in 1872; and the Waltz case, in Greene County in 1874.

It is to be presumed, however, that a lawyer will always endeavor to ascertain what is the best form of defense which his client can offer in answer to an indictment before going to trial No one is ever denied a reasonable time in which to prepare himself, and if he does not improve it he is guilty of negligence. But even then the defendant is not remediless, since he may demand a new trial for the reasons above recited.

But the statute only requires and limits this plea to the time of arraignment when the case is one of such palpable insanity as to constitute the *sole* defense. If the party can show anything else which might of itself constitute a defense, he may at any stage of the trial combine with it and prove the existence of a mental state calculated to lower his power of reasoning and self control at the date of the offense charged, and thus negative malice, premeditation or intention. And if the jury choose to interpret this as implying insanity, they are at liberty to do so. But in that event, they must find a special verdict so stating it, whereupon the party is committed to an asylum for observation and treatment, his previous acts showing him to be a dangerous lunatic, not safe to be at large. The final disposition of the party is the same in either event. But in the first a commission is appointed, and the county spared the cost of one or more trials. In the second the trial goes on in the usual way, save that no commission can be appappointed, because no special plea of insanity can then be interposed. The statute thus gives an alternative course of defense to the party indicted, in which it is also made, for economy's sake, the interest of the prosecution to join ; because, whatever may be the issue of the trial, the defendant must eventually remain in the custody of the State.

Having thus, as I conceive, made answer to the objections advanced in our President's paper, I now resume my exposition of the intent of the new provision under discussion. After hearing the plea of insanity tendered, the presiding judge may or not, as he sees fit, receive it. If he does, his duty then is to appoint a commission to try as a preliminary inquiry this question, in order to determine whether the party truly belongs to that class of persons whom the statute has designated as dispunishable. Necessarily the statute fails of its purpose if it does not allow the party indicted the opportunity of using the immunity which it provides for his class. Besides which, he may claim that privilege as a right under the following provision of our revised statutes: "And every person indicted shall be admitted to make any lawful proof by competent witnesses on oath, or by other lawful testimony." (*R. S. Part* 4, *Ch.* 2, *Tit.* 5, § 15, [13]).

The omission to join a jury to the commission by express mandatory words will, it is believed, be found to work no detriment either to the people or the defendant. Cases may arise where circumstances might make it expedient to call one; and, if so, there is nothing to prevent the commissioners from doing it. But ordinarily, it will not be necessary; and to have made it obligatory upon them would have simply opened a door for habitual, rather than occasional, error to enter at. Besides which, the present form is in nearer harmony with our practice in other directions. Under the first section of the Act of 1874, a party shown to be insane may be committed to an asylum upon the certificates of two qualified medical examiners, duly approved by a Judge of a Court of Record, with whom it is left optional to call a jury. Of the commitments made during the past year, and amounting to many hundreds, nine-tenths have been without any trial by jury, judges seeing no necessity for it, and no one complaining of being wronged thereby. Yet no one doubts the legality of such proceedings. Now, when a commission, duly appointed by a court, of competent jurisdiction, finds, upon careful inquiry and examination, an indicted person insane why should less weight be given to its judgment? Does the fact of a man being accused of crime make it any more diffi-

cult to discover his insanity than if he was simply accused of eccentricity—of believing in metempsychosis, or of considering himself the Creator? Why should a simple accusation, which may prove to have been wholly erroneous, destroy a man's privilege of being tried by a commission of experts who are competent, and remand him to a jury of non-experts who are wholly incompetent? He is entitled to the benefit of every doubt that can be raised in his behalf; but if the only doubt in his case is one which a jury cannot appreciate, then virtually, as to this fact, he cannot be said to have a fair trial.

If again, as has been shown, Courts do not regard the trial by jury of a question of insanity as an indispensable prerequisite to the right of committing a person by civil process to an asylum, why is it of any superior importance in a case of alleged crime? The object of any trial under an indictment is to determine whether the party shall continue to remain in the custody of the State to abide its judgment in the matter of penalties to be inflicted upon him, if proved guilty. But when a dangerously insane person, who cannot be legally *out* of the custody of the State—who cannot be a criminal under its laws, and yet, being indicted, claims that very custody which criminals seek to escape from, why should he be compelled to put himself upon trial for the purpose of determining the very thing which cannot legally inhere in him—viz., guilt?

If the reason for any trial is shown not to exist, then it is plain that the right of insisting upon a trial must fail also; and we have just seen that under long-established provisions in the Revised Statutes, a party when indicted is authorized to offer any lawful testimony in his own behalf.

Again, if it be said that this provision takes the right of a trial by jury from the people, my reply is:

1st. That the right of trial by jury emanated from the people as the sovereign power, but is not intended for their protection collectively, or in their corporate capacity, because it is not the sovereign power which needs this bulwark against itself, but the weaker citizen, on whose personal liberty that power may, as a State, encroach. Hence the Constitution of

the United States declares that 'in all criminal prosecutions the *accused* (not the people, for they are not on trial) shall enjoy the right to a speedy and public trial by an impartial jury," etc. But even this is contingent upon a demand for a trial by a jury on the part of the defendant. Suppose he demurs to the jurisdiction of the Court at the outset (as in Wilson's case, 3 *Blatchf.* 345), can the people insist upon putting him upon trial by jury before that question is first disposed of? Or if he pleads guilty to the indictment, does he not waive a jury trial? I know it has been usual in trials for capital offenses for Courts to refuse to receive pleas of guilty in the first degree by absolute confession of all that the indictment alleges, on the ground that the defendant may, through ignorance or fear, have been seduced into admissions which, upon trial, might not be susceptible of legal proof. If so, then the interference of the Court is not in behalf of the people, who may thus be deprived of their right of trial by jury, so much as in behalf of a defendant, supposed to be *weak-minded* or ignorant, and thus incapable of understanding that he has possibly a good defense. Now, suppose the defendant can show the very reason to exist which the statute says shall be a bar to any criminal trial, why should he not be permitted to show that reason by way of answer to the indictment upon arraignment? It is the best evidence which the nature of his case admits of. The only valid reason why courts refuse to receive pleas of guilty in the first degree, is that the State has an interest in the *life* of every citizen, and will not permit him to throw it away. But if in the case of a party pleading insanity to an indictment, his life cannot be taken as a penalty for his act, whether he be tried by a jury or a commission, then the object of insisting upon a jury trial fails to have any pertinency.

2d. Where a party can show that he was insane when he committed an alleged crime, the people have by solemn enactment decreed that they shall not demand his trial as an offender, because they expressly aver that he shall in no sense be considered such. When limits to a criminal jurisdiction are thus trenchantly defined, is it right to compel a party to go to trial who can possibly show that the people were estop-

ped by statute from demanding one? Is it necessary for the people to undertake a trial in order to discover that they had no fundamental right to demand one from a party who was out of their criminal jurisdiction? If, therefore, they have specially designated by statute a class of persons who, by reason of their mental unsoundness, can plead to the jurisdiction, why should they not be permitted, as in other cases, to have that plea first disposed of before entering upon a trial which does not apply to them? The moment any man accused of crime can show when his insanity began, that moment all subsequent proceedings, whether by indictment or trial, become invalid or nullified. It is for the purpose of carrying out these provisions of the Revised Statutes that the law of 1874 was framed.

When it is said, therefore, that the Legislature has the same right to authorize the appointment of a commission to try a plea of *alibi* or infancy * as one of insanity, the sovereign fact is overlooked that an *alibi* is a question simply of *disputed identity*, to be settled by the testimony of ordinary witnesses, as is also infancy, while insanity, under every form of civilized jurisprudence, has always been recognized as a special legal status to be exclusively established by skilled testimony. There can be no analogy, then, in law between the pleas of *alibi* or infancy or even feme-covert, all which are ordinary facts within the purview of ordinary testimony.

3d. The act of 1874 does not alter in any particular the character of an existing legal tribunal by erecting another within its jurisdiction, but simply supplies an easier, more economic and equally safe form of procedure for enabling that tribunal to ascertain the limits of its jurisdiction over the defendant. Nor can there be any doubt of the right on the part of the Legislature to make such alteration in procedure as this. For, under the 8th section of Article VIth of the Constitution of 1846, which still remains in force, it is ordained that "the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and

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* "*Hints for Legislative Reform*," a paper read before the N. Y. Medico-Legal Soc., Dec. 23, 1874, by John R. Dos Passos, Esq., published in March No. 1875, of Psychological and Med.-Legal Journal, p. 141.

equity that they have heretofore exercised." Therefore it is that the reference to the Cancemi case (18th N Y., 128), made in the President's paper, does not, in my opinion, apply to the point under discussion. There a defendant, who had put himself upon the county, consented to be tried by a jury of *eleven;* and the Court of Appeals held very properly that a common law-jury consisted of twelve, and that no other number formed a legal jury. Having once put himself upon trial by joining issue, neither party could at their mere pleasure alter the form of a constitutional tribunal. But in the present instance it is not a question of guilt that is being tried between the people and the defendant, but a questisn of jurisdiction founded upon a certain fact to be first ascertained, that fact being the insanity of the accused. The question of guilt, both logically as well as legally, must be subordinated to that of sanity; for, after all, the former has no capacity of existence outside of the latter, and a mere presumption of sanity, like one of innocence, is always rebuttable, otherwise as we have elsewhere shown, no man could be put upon trial. It follows from these conclusions that the trial of an insane man by a jury sworn to try only the question of his guilt, is by the intent of the language of the provision in the Revised Statutes, an illegal trial. His insanity is one thing and his guilt another, and the two propositions are made irreconcilable by the above-cited provision. I know very well that it has been the habitual practice of our courts to let the defendant prove his insanity, when it constituted his sole defense, at any stage of his trial; but if this practice is shown to be erroneous in principle and costly in operation there would seem to be no reason in mere custom for adhering to it.

The points to be remembered in this connection are.

First, That an insane person can not, in legal contemplation, commit a crime.

Second, That an insane person can not be indicted.

Third, That an insane person cannot be tried.

Fourth, That the same principle which allows the people to try a man presumed to be innocent, should allow a defendant presumed to be sane to prove that he was not so when he committed an alleged crime, and that, too, without compelling

him to answer an indictment founded solely upon guilt.

Nor does the statute of 1874, by mandatory words, erect a new tribunal within another, because it leaves it optional with the Court to appoint the commission, and optional with it also to approve and confirm its finding The report of the commission is not final, nor is it the report of the commission which legally establishes the insanity of the prisoner. The authority to do this remains exclusively in the Court, for the statute explicitly says, that "upon the report of said commission, *if the Court* before whom the indictment is pending *shall find* that such person was insane and irresponsible at the date of the offense with which he stands charged, the Court aforesaid shall order his removal to some State lunatic asylum, etc., etc." It is plain, therefore, that if the Court find the party insane it cannot do otherwise than send him to an asylum, because it cannot find him both irresponsible at the date of the offense and responsible at the date of his trial. The trial, for its right to be, depends upon the existence of a previous offense, as a *sine qua non ;* and if it be shown that there was no party competent to commit an offense then the trial must fall to the ground. *Sublata causa tollitur effectus.* Independently even of the statute, the Court is not bound to resort to a trial by a jury to ascertain that fact, any more than in the case of any alleged lunatic whose lunacy is established to the satisfaction of a Court of Record, under § 1, Art, 1, Tit 1. But it is plain that it cannot find him to have been insane at the date of the offense, and at the same time require him to answer to and indictment which has no legal foundation to stand upon the moment the fact of such insanity is established. He was either sane and responsible or insane and irresponsible when he committed the offense ; but he could not be both.

The next point to consider is, whether the commission, in their report, if they find that insanity existed at the date of the offense, should find that it still continues. I know it has been the habit to expect, if not to require it, under the provisions of the Acts of 1842, 1847, and 1869, but in reality there is no necessity for it, and even if stated, it adds no value to the scientific or legal accuracy of the report beyond the day on which that report was made. For if the Court

should fail to send the defendant to an asylum on the day of the date of the report, then under this reasoning it would be necessary to make a fresh report of its continuance every day, and thus to keep the commission in session until the defendant had in fact been committed to one.

Now, it is a well-established principle that when a party has once been found insane by inquisition, he is presumed to continue so until such finding is legally vacated, and the burthen of proof is thence shifted to the party alleging sanity. It would be a singular departure, indeed, from all recognized rules of evidence, as well as from all experience in the physical law of insanity, when a party had been legally adjudged insane within a reasonable time to permit a mere inference of his recovery a few days after to weigh down a legal judgment. Hence the defendant having been found insane at the date of his offense, and the commission ascertaining this judicially within a reasonable time afterward, such insanity must be presumed to continue from that date onward, until disproved by similar judicial finding.

Chancellor Kent, alluding to this persistence of insanity, uses the following significant language :

"I have frequently been visited by lunatics against whom an inquisition had been returned and a committee appointed. Their object was always to complain of the proceedings or of the committee, and I have rarely been able on such occasions to detect the mental infirmity. Lord Eldon has observed that he once, as counsel, succeeded in getting Lord Thurlow to supersede a commission, and was satisfied, from many conferences with the party, that he was perfectly rational. But when he obtained the order of *supersedeas*, and the party came to thank him for his services, he discovered the disorder in five minutes, and regretted all he had done."

(*In re Hanks*, 3 *Johns Ch. R.*, 567.)

CRIMINAL RESPONSIBILITY OF THE INSANE.

There has been an immense amount of needless discussion in legal adjudications upon this subject, all revolving about the one pivot of punishment. But for the traditional difficulty which has always beset common law courts of determining how the violated dignity and sovereignty of the State can

be adequately vindicated in questions of alleged crime, without resorting to penalties *in extremis*, we should long since have been delivered from the dread of the plea of insanity as an answer to indictments. In all other directions save this our common law jurisprudence has been willing to walk in the vanguard of social enlightment, and to follow the lead of such eminent jurists as Lord Mansfield, Sir William Scott, and Sir John Nicoll. But here we are still creeping in the same swaddling clothes which Lord Coke, as our legal wet nurse, put around us in Beverley's case (*4th Rep.*, 123). It would seem, in fact, that the dread of the effects of a plea of insanity rests solely in the apprehension of losing an opportunity to execute capital punishment upon a human being, whatever his mental state. Courts do not appear to be satisfied that justice can be fully done and society adequately protected by the incarceration of an insane man *indefinitely* in a lunatic asylum for criminals. In any other case imprisonment for life is held to be sufficiently severe whenever the least shadow of a doubt as to malice or premeditation exists in relation to the crime ; but the moment the question of insanity is raised in connection with crime, we are instantly confronted with such metaphysical riddles as these : There is no perfectly sane mind save that of. the Deity ; therefore, all men are, to a certain extent, insane. Now, tell us how insane the defendant is. Is he within Beverley's case, or McNaughten's case ? Because if so, then, although regarded as insane *physically*, but legally only partially insane, he is still amenable to punishment. Then follow attempts at legal differentiation of intellectual states, as, for instance, that the defendant knew right from wrong ; that the defendant was rational on all topics but one ; that he knew his own identity—all which a majority of the insane never lose their knowledge of until they become maniacal to incoherence, or demented to fatuity. With scientists such facts are no longer debatable. They have passed out of the field of argument. They are everywhere written in the imperishable runes of scientific experience, and have taken their place among the established laws of our mental constitution.

The perpetual contradictions in adjudication, and the cease-

less grasping of Courts after Ariadne's thread to lead them through the mazes of this tangled subject, will continue to be repeated just so long as we persist in making criminal responsibility rest upon any such arbitrary factor as automatic knowledge, independent of power of self-control in action, and as influenced by disease. It is not necessary, however, to the elucidation of this topic that I should review the past history of these conflicting adjudications, which, relatively to the progress of science, occupy the same position that the Ptolemaic system does to the Copernican. They are only re-affirmations of traditional dogmas which settle nothing, and leave us still moving in a circle of endless confusion. I shall limit myself to citing the two most recent cases in our own reports, by way of sustaining the assertion made by me that we have not advanced beyond Beverley's case decided over two hundred years ago, and at a time when nothing was known of insanity as a disease, and consequently of its sphere of radiated influences upon thought, action or self-control. It was the rule then to look upon the insane as a class of beings under demoniacal possession who passed in and out of this condition either through lunar influences or by spiritual self-enslavement or purification, and whose lunacy could be scourged out of them by whipping, or purged out of them by priestly exorcism—a view which fully justified as a logical outcome the treatment they received both in and out of court. Living under the present scientific illumination of this subject, we should hardly admit that the views of Coke or Hale on insanity ever could have been correct. And as their legal doctrines upon it must have taken color from, and represented their knowledge of its phenomena and consequences, we are forced to the conclusion that from so faulty a source no defensible principles of law could flow. Yet these doctrines still sway our jurisprudence because of the fact so well stated by Mr Maine in his work on Ancient Law, that "the stationary condition of the human race is the rule, the progressive, the exception. It is indisputable that much the greatest part of mankind has never shown a particle of desire that its civil institutions should be improved since the moment when external completeness was first given to them by their embodiment in some permanent record"

The first of the cases above mentioned to which I wish to call your attention in this connection is that of the People *vs.* Montgomery (13 *Abbott's P. R., N. S.*, 207 : *A.D.* 1871). There Judge Mullin expounded the law relating to the criminal responsibility of the insane in the following words :

"In criminal cases proof that the accused was insane when the crime was committed is not enough to require the jury to acquit. It must be shown that the insanity was such as to destroy, for the time at least, the consciousness of the distinction between right and wrong in reference to the act charged."

The first clause of this opinion concedes the whole question. If the party was insane all his acts were the acts of a mind under duress. And the second clause, in which the ability to distinguish right from wrong is made a test of legal responsibility, has no foundation in nature to rest upon. The knowledge of right and wrong is no more a test of a sane mind than the absence of it is a test of an insane one. All experts in insanity know this to be an unvarying rule. At the annual meeting of the British Association of Medical Officers of Asylums and Hospitals for the Insane, held in London, July 14, 1864, at which were present fifty-four medical officers, it was unanimously

Resolved, "That so much of the legal test of the mental condition of an alleged criminal lunatic as renders him a responsible agent, because he knows the difference between right and wrong, is inconsistent with the fact, well known to every member of this meeting, that the power of distinguishing between right and wrong exists very frequently among those who are undoubtedly insane, and is often associated with dangerous and uncrontrollable delusions."

In the case of the People *v.* Kleim (1 *Edmonds*, 28 *n.*), Judge Edmonds thus illustrates the value of the right and wrong test when speaking of the defendant : "He knew the act was wrong, yet he was insane. The act of piling up shavings, fastening the woman in her hut, and forcing her back into the flames was not 'an involuntary act of the body without the concurrence of a mind directing it,' yet he was insane. He knew the 'act was contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty,'

yet he was insane. He knew 'he was acting contrary to law,' yet he was insane. He knew 'the act was one he ought not to do,' yet he was insane."*

Reverting now to the second clause of Judge Mullin's opinion, it would seem to be open to still greater objections, for he says :

"When such a degree of insanity is shown to have existed previous to the offense, the people must prove, in order to convict, that when the crime was committed the insanity had at least temporarily passed away, leaving the prisoner in that condition of mind in which he was morally and legally responsible for the crime. But they are not bound to show that the mind had thrown off the disease, and was restored to a healthy condition."

There is a painful ambiguity of language here, since if the mind has not thrown off the disease how can it be known even that it has temporarily passed away? Insanity is not, however, an ephemeral disease, coming and going between sunrise and sunset. If it exists plainly enough to be recognized, it must be considered as already established in the constitution, and if the people "are not bound to show that the mind had thrown off the disease, and was restored to a healthy condition," then they can proceed to try and punish a confessedly insane man, which would be, in fact, a violation of all law, written or unwritten.

The result of this opinion was the erroneous conviction of the defendant Montgomery, whom a commission, to which I have already averted, found had been a chronic epileptic, and he was, accordingly, sent to the asylum for insane criminals.

The second case to which I would call your attention, as repeating all these convicted errors of the past, is that of Flanagan *vs.* the People, (52 *N. Y.*, 467) itself, but reaffirming the decision in (*Willis* vs. *People*, 32 *N. Y.*, 717) A. D. 1873.

The opinion of the Court, as pronounced by Judge Andrews, is in the words following :

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* Judge Edmonds' quoted passages are from C. J. Shaw's opinion in Comm. *v.* Rogers, 7 Metcalf, 500.

"When insanity is interposed as a defense to an indictment, the test of responsibility is the capacity of the defendant to distinguish between right and wrong at the time of, and with respect to, the act complained of.

"The law does not recognize a form of insanity in which the capacity of distinguishing right from wrong exists without the power of choosing between them."

The error of the first clause of this opinion having been sufficiently commented upon in the Montgomery case just cited, I pass to the second proposition.

I presume it will be admitted by all that there are many perfectly sane persons who, knowing right from wrong, are yet in circumstances not to be able to choose between them; as, for instance, where a man under duress commits a misdemeanor, or a married woman in presence of her husband. These are old and well settled principles. And by parity of reason there can be no form of insanity in which a man is not more or less under the constant duress of his malady. It seems illogical to speak of a man with a disordered mind as a free moral agent, and the fact of his being able to distinguish between right and wrong is no more a test of his sanity than his being able to distinguish light from darkness is an evidence of his power of choosing between colors. A paralyzed man whose house is on fire may know that it is wrong to remain in it, but he can exercise no choice about leaving it. He is compelled to one course of action only, despite his knowledge and his wishes to the contrary. Those "who know the right, and yet the wrong pursue" are not necessarily malefactors. If there be one expressly characteristic feature in insanity dominating all others, it is that of the extreme difficulty, if not impossibility, of self-control, no less in action than in thought. We all know from experience that the most healthy minds, when strongly moved, are often carried against all power of self-resistance beyond the limits of self-control; anger and indignation in certain temperaments become temporary convulsions. No one pretends, however, that such persons should be exonerated from responsibility on this account, because they have an anchorage in health, and it is their duty to maintain their hold upon it.

But it is very different with the insane, who, having lost their mental ballast, are easily careened and overthrown in the contest with their own judgment as well as feelings. Such men may know fully, and yet not be able to act any more than a man finding himself falling can choose between a hard and a soft spot on which to alight. It is error to say absolutely that the law does not recognize such operations of nature, for it does constantly. For instance, were a heavy man to slip in the street in a winter's day, and fall upon a child and crush it, would any law punish him for it? All municipal law must ultimately rest upon the law of nature, and to make artificial rules for civil governmant which are in contravention of the former is to endeavor to be wiser than the Great Author of all law. To lay it down, then, as the solemn adjudication of the highest Court of our State, that "the law does not recognize a form of insanity in which the capacity of distinguishing right from wrong exists without the power of choosing between them," is to formulate the doctrine that the phenomena of nature shall have no other interpretation than Courts choose to give them, which is a practical reaffirmance of the celebrated case of the Propaganda *vs.* Galileo.

This doctrine, I am happy to say, is not of universal nor even of general acceptance. And the honorable Bench from which it emanated will, I have no doubt, take occasion, on a fitting opportunity, to revise it. In the case of the People *vs.* McFarland, (8 *Abbott Pr. N. S.* 57), one of our best criminal judges, Recorder Hackett, in discussing this point, says that "the power of distinguishing right from wrong in reference to the act is not alone decisive." In a Pennsylvania case, that of the Comm. *vs.* Haskell (2 Brewster, 401), Judge Brewster, after examining the entire scope of the subject, lays down the following sound principles in relation to the criminal responstbility of the Insane. These views, I am happy to state, represent everything which can be demanded by public safety, sound justice and scientific accuracy. They are expressed in the words following :

"The true test in all cases lies in the word power. Has the defendant in a criminal case the power to distinguish right from wrong, and the power to adhere to the right and avoid

the wrong?" (*Vid. Stevens* vs. *State*, 31 *Indiana*, 485, *and State* vs. *Felter*, 25 *Iowa*, 67.)

After a careful consideration of this subject, extending over a period of many years, first in its purely legal aspects as part of the history of our criminal jurisprudence, and subsequently by personal examinations of a large number of insane criminals and a critical inquiry into the mental phenomena accompanying the commission of their imputed crimes, I am satisfied that the proper manner of presenting such cases to a jury in a charge from the Court, or before a commission of experts, is to require them to determine the following facts, viz :

First—Whether the defendant, at the time of the alleged crime, knew the nature and consequences of the act he was committing?

Second—Whether, if he did so know them, he had a felonious intent in committing the act?

Third—Whether, knowing the nature and consequences of the act, he had the power to choose between doing or not doing it?

Fourth—Whether, supposing he had lost the power of choosing between right and wrong in reference to the particular act, he had lost that power through *disease*, and not through intoxication, violent anger, or any form of self-produced mental convulsion?

I cannot conceive of any case of insanity combined with crime to which these questions would not be relevant. They give the defendant every opportunity of showing what his true mental condition was at the date of the offense, and at the same time leave no loophole through which simulators can escape detection and conviction

But there is a far more difficult class of cases to deal with than these, and one which taxes not only the skill of experts, but the legal wisdom of counsel and the judicial forbearance of courts. I allude to those cases of *paroxysmal* insanity which never come into the field of judicial investigation without giving rise to much unjust criticism upon all knowledge of mental disorder. Thus whenever, upon a return to a writ of habeas corpus, a party is discharged from a lunatic asylum,

it seems to be taken for granted that he was either illegally committed there or improperly detained beyond the period of his established convalescence Apart from *forms* of procedure required by statute, you will observe that both of the above questions involve radical problems which cannot always be easily or safely decided by a judge at chambers after a short conversation with the alleged lunatic, or hearing a few affidavits read of persons who have made quasi medical examination of him in an hour's time. Without further testimony relating to his life, habits, conduct and conversation, no one can safely undertake to give a final opinion upon his mental sanity.

I can produce any day a hundred lunatics, selected from our various asylums, who, if they were placed in any parlor or office and engaged in general conversation, would no more reveal their insanity necessarily than they would their religious convictions or their parentage. If you were asked to state under oath what your opinion of such person's sanity was, you would feel almost ashamed to doubt it for fear of casting imputation upon your own. Yet these people are lunatics, and need hospital treatment. You think they are well because they are not in an actual paroxysm of their malady, but they are just as much within its grasp as a man with tertian ague is within the grasp of his disease on his well days. Insanity, like all the neuroses, is a disease characterized by intermittent exacerbations, and while in its intervals its victims may seem perfectly restored to the eyes of casual observers, experts know but too well the unreliability of any opinion based on a personal examination, when not accompanied by a complete history of the patient's past life. You have just heard me quote Chancellor Kent's remarks upon the delusive features of insanity, and I will now give you a representative case by way of illustrating more forcibly the point under discussion.

There is in this city, at the present time, a gentleman whose state of mind is such as to render it expedient that he should receive hospital treatment. He will not submit willingly to a medical examination for that purpose, and thus take steps toward protecting himself against the consequences of his

malady. He has already been in *five* different asylums, from some of which he has escaped. He is talented, educated and witty, endowed with cunning and such a happy *tour de phrase*, that the most astute inquirer cannot, on a cursory examination, catch him tripping, and notices only an excessive volubility, accompanied with unnecessary emphasis Yet follow him in the street, and you find him commanding apple women to go down on their knees and repeat the Lord's prayer under penalty of eternal condemnation—you find him personifying this or that clergyman in order that more consequence may be attached to his preaching—and in various ways is untruthful, deceitful and tricky, with a disposition to be violent if opposed. This is his mental condition in his best present moods. Of course, in his paroxysms he is like other maniacs.

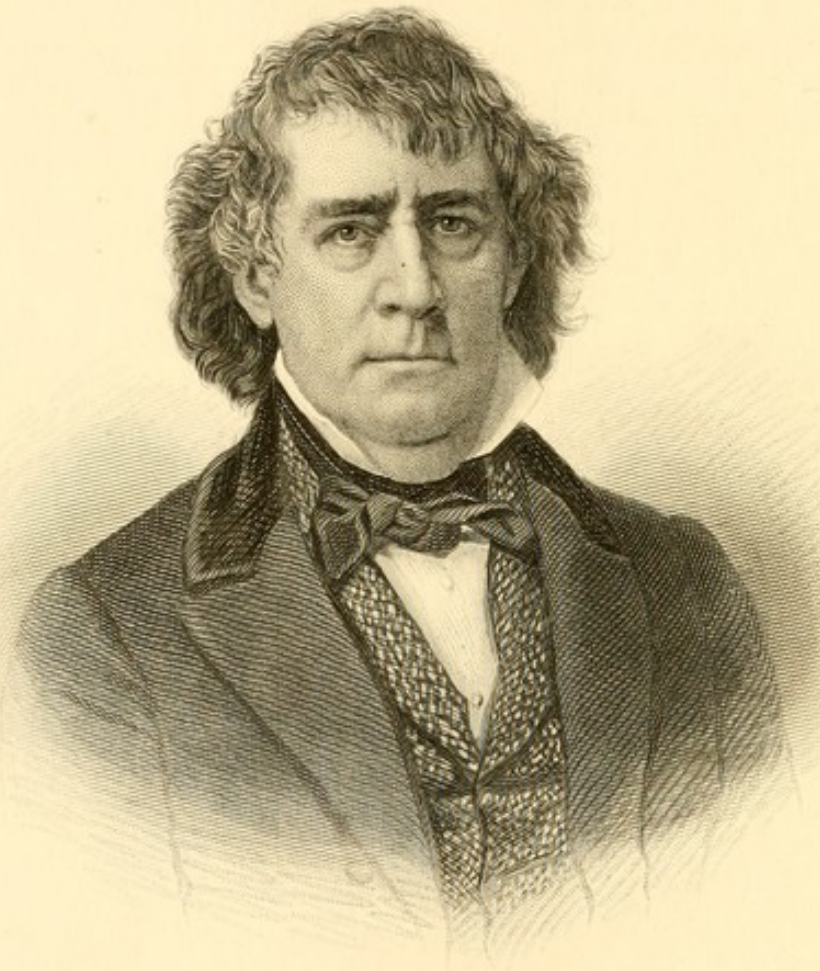
Now, the legal question to be asked in such a case is this: Should this man be deprived of his liberty? Is he dangerous to himself or to others, or is this simply harmless eccentricity exaggerated in degree? Looking first at the question, irrespective of the past history of the individual, it seems an unavoidable conclusion that if he commits trespasses upon apple women in the streets, or assumes the names of other persons for purposes of deception, he is a wrong-doer who may be punished, even though he should do it with the intention of saving their souls—but when, secondly, his past history is inquired into, and he is shown to have been at various times presumably insane, his present inability to control his actions without encroaching upon the rights of others, though void of criminal intent, shows him to be legally *non compos*, and a proper subject therefore for commitment to an asylum.

In cases like the foregoing, our judgment in action should be guided by the reflection that all the tendencies of insanity are toward increase in loss of self-control, consequently of risk to the safety of the individual as well as society. And we are guilty of laches of the most culpable character if we do not act upon the warning given us in the conduct of such a person, even though no criminal intent be proved in it. For the day may come, and too often does come, when, with increasing weakness of self-control, a slight opposition to

the wishes of a lunatic irritates him into an act of irremediable wrong.

In bringing my paper to a close, I am not unaware of the fact that I have left many topics untouched about which much that is useful could be said. *Wills* and *contracts*, for example, are subjects which present a very wide field for inquiry. But I did not come with the intention of discussing insanity in all its legal aspects, nor of giving to my paper the character of an exhaustive monograph upon it. The points to which, under the invitation to address you, I was more particularly requested to direct my attention, had reference to recent lunacy legislation in our State, and in order to justify this, so far as I had any share officially in it, there seemed a necessity for reviewing, in a general way, the history of our common law jurisprudence in its relations to insanity.

Without claiming, therefore, to be the first discoverer of long-standing deficiencies in this field of municipal law, I still think I have sufficiently pointed them out to you to show that the time is at hand when we must take a new departure, and unaffrighted by the *ne plus ultra* of Westminster Hall, sail boldly past its Pillars of Hercules; when we must act upon the conviction that there is a limit even to the value of a precedent; that human laws are but the fallible works of fallible heads, needing to be changed with the increasing light and the varying necessities of every age; and finally, that it is the duty of those upon whom devolves the administration of our municipal law to see to it that, being its chief instruments of expression, they do not become the chief obstacles to its growth, by clinging to its technical letter rather than following its animating spirit.



T. Romeyn Beck

Engraved by H.B. Hall from a Daguerreotype
by H. McBride

Theodrie Romeyn Beck, M.D., L.L.D.

There is no name on the American continent to whom the science of Medical Jurisprudence is more indebted than that of Dr. T. Romeyn Beck. He, more than any other man of the previous generation, brought forensic medicine to the notice, not only of the two professions of law and medicine, but to the general recognition of the country.

"Beck's Medical Jurisprudence," originally published in 1823, which has passed through many American, English and German editions, was universally acknowledged in its day, to be a leading work on the science, and was as often found upon the shelves of the lawyer's library as that of the medical man.

Dr. Beck was born at Schenectady, August 11, 1791, and died November 19, 1855. He graduated from Union College, Schenectady, at the age of sixteen years, and took his degree at the New York College of Physicians and Surgeons in 1811. The degree of LL.D. was conferred upon him by the Mercersburg College, Pennsylvania, and by Rutgers College, New Jersey.

In 1815 he was appointed Lecturer on Medical Jurisprudence in the College of Physicians and Surgeons for the Western District, then established at Fairfield, New York; and in 1826 was made Professor of Medical Jurisprudence at that College, which chair he held until 1840.

When the New York State Lunatic Asylum at Utica was founded he was named as one of the Board of Managers, which position he held until his death; and on the death of Mr. Munson, in 1854, was unanimously elected President of that Board.

He was a contributor to the *American Journal of Insanity* while Dr. Brigham was the editor, and, on the death of that

gentleman in 1850. was chosen its editor, which position he filled until the year before his death.

We quote from his remarks on the proposed establishment of a university, made in the capitol at Albany, March 30, 1853, before the Legislature, the following:

"We require the appointment under public authority of a *Professorship of Medical Jurisprudence or Forensic Medicine.* It is not possible to do full justice to this subject in Medical Colleges. We teach there what is known; we want a person or persons who shall ascertain, if possible, the unknown; and great as have been the discoveries of late years in this science, still the cunning of the murderer has frequently outrun them.

"Why should not men duly qualified be appointed to such an office, who, by their researches, would be far in advance of those who, by secret, and in some cases almost unknown means, prevent detection in the commission of crime.

"There is a person now living (Orfila), the certainty of whose knowledge on the power of poisons is such, that he is not only called to examine cases in every part of France, but not long since was summoned to Belgium in one, which, at the time, attracted the attention of all Europe. I hold that there should be two or three such persons of this character appointed and paid by the Government to perform this important duty."

It seems proper when we are almost at the close of the generation which has passed, since death terminated the labors of this early American student and teacher of forensic medicine, whose name has been so intimately associated with the growth and progress of Medico Legal science in the last years of our century, that we should present his portrait to the members of a society devoted to a science of which he was so lustrous an exponent and ornament.

We are indebted to Prof. Frank Hastings Hamilton, ex-President and Honorary Member of the Medico-Legal Society, for the leading facts as to the life and death of Dr. Beck, and to his surviving daughter for the engraving which embellishes this volume.

C. E.

SUITS FOR

MALPRACTICE IN SURGERY.

THEIR CAUSES AND THE REMEDIES.

By FRANK H. HAMILTON, A.M., M.D., L.L.D., of New York.

Mr. President and members of the Medico-Legal Society of New York :

In rising to address you this evening, I feel very much as I imagine an offender must feel, who, conscious of his guilt, is brought to the bar for trial in open court. It has been announced that I am to read to you a paper on the subject of prosecutions for malpractice in surgery; but I come before you without a written paper, and with but little preparation of any kind. Some reasons might be given for these violations of both actual and implied agreement on my part; but I prefer to offer no apologly, only throwing myself on the mercy of the court.

Permit me to read to you, as a suitable introduction to my remarks, a letter which I have just received from a surgeon in one of the Western States :

"Dear Sir :—You have in your possession, I believe, a certain form of agreement, formerly used by yourself when taking charge of important surgical cases. Here, in the midst of an ignorant community, my partner and myself have

Delivered before the Medico-Legal Society of New York, March 25th, 1875.

learned the folly of being perfectly unprotected while engaged in quite an extensive surgical practice. If you have such a paper, would you be kind enough to send us a copy? We shall consider it a very great favor.

"Very respectfully yours, &c."

This letter is a fair illustration of the character of the notes which I have received every now and then for many years past. Some anticipating the possibility of a prosecution; others seeking advice as to how to escape a threatened prosecution; and others asking my attendance when they are actually prosecuted.

It is scarcely necessary to say to this audience, and especially to those belonging to the profession of law, that the gentleman who addressed to me this note, was in error in supposing that I had ever used any such form of contract as he refers to, since no contract could be so framed as to relieve the surgeon of the responsibility which he assumes when he undertakes the treatment of a case; at least I may say that I have never used any such form, and I presume it would be worthless. It will, however, be the purpose of my remarks this evening to answer the questions implied in the letter of my western friend.

Are surgeons peculiarly liable to prosecution for malprectice?

Probably it is well known to both the lawyers and medical gentlemen who are present that they are. Indeed, it is a fact so notorious that it would scarcely seem necessary to refer you to the recorded testimony as evidence, or to speak of my own personal experiance as a witness in a large number of cases. But it is doubtful whether any of you, gentlemen, unless you have given especial attention to the subject, know to what an alarming growth this evil had attained a few years since.

During the period of time extending from the year 1833, when, on admission to the practice of medicine and surgery, I first became aware of the condition of matters in my profession, down to the year 1856, or thereabouts, suits for malpractice were so very frequent in the Northern States—they were always less frequent in the Southern States—that

many eminent men who had acquired reputation as surgeons, in order to escape the danger which seemed to threaten all alike, abandoned the practice of surgery, leaving it to those who, with less skill and experience, had less reputation and property to lose. I have known as many as three cases of prosecution against surgeons in a single term of a court; and at one time there was scarcely a surgeon in the State of New York, of any respectability, who had not been prosecuted one or more times; and probably not one who had not been often threatened. Very many had been mulcted in heavy damages, and not a few of those who secured a verdict in their favor were irreparably ruined, both in purse and reputation, before the case was finally decided. A surgeon in Vermont was prosecuted many years in a case in which the plaintiff claimed damages on the ground that his wife had been treated for a fracture, and confined to her bed for several months, when no fracture existed; nor did the case leave the courts until the doctor had lost his property in the protracted defense—not, indeed, until the death of the woman enabled the defendant to show the broken bone as proof that he had judged and practiced correctly. In Buffalo, an excellent German physician, with a most interesting family, were brought to ruin, and he sent to an insane asylum, in consequence of a heavy judgment obtained for alleged maltreatment, of a colles fracture; when the treatment had been eminently skillful, and the result quite equal to the average results. A distinguished professor of anatomy was prosecuted for causing a dislocation of the radius and ulna backwards, when, in fact, he only failed to reduce an old dislocation of this character. Another professor of surgery was prosecuted and made to pay damages, although he never saw the case but once, and then only as counsel. A young surgeon was compelled to pay $600 in damages for reducing a dislocation of the shoulder, because an ignorant jury, and one or two equally ignorant suegeons, thought that if reduced the shoulder would necessarily have been as perfect as before. They held that the doctor had only "partially" reduced the bone, when, in fact, the reduction was complete.

The best surgeons were the most frequently prosecuted;

and the speaker has always felt that he, perhaps, had some reason to complain, inasmuch as he had never been prosecuted, and he could not, therefore, claim for himself this title to respectability.

Lest you should think the picture too highly colored in which I have endeavored to represent the condition of matters in our profession a few years since, I will read to you from "Elwell on Malpractice," a work published in 1859, and with which probably most lawyers are familiar:

"Happily criminal malpractice is rarely met with in courts of justice (the writer might have said *almost never*, except in the case of empirics), while civil suits for damages are of a frequency alarming both to the profession of medicine and to the public. Suits of this class, in some parts of the country, seem to be on the increase. So common is it for the surgical treatment of the oldest and best physicians and surgeons in general practice to be called in question and overhauled in courts of justice, that there is at this time a general feeling of uneasiness, and a conviction that the business is at best very dangerous, so far as property and reputation is concerned. The result is that some of the most thoroughly qualfied men utterly refuse to attend surgical cases, confining their practice to that of medicine alone. They say the compensation usually attending the practice of surgery does not warrant a man of property in exposing himself to the probability of having, sooner or later, to defend his treatment in an action for malpractice. Victory in these cases is, in one sense, defeat, because the disgrace, vexation and cost are generally ruinous" (pp. 7, 8).

In 1856 the Committee on Surgery in the Ohio Medical Society reported: "There is a standing and apparently cumulative evil,—an evil bearing with the weight of an incubus upon the profession. It is the frequency of difficulties on account of alleged malpractice in the treatment of fractures." The writer adds that in his personal experience "during one week, in as many different counties, four cases were tried." And in conclusion he asks, what can be done to put an end to these unjust charges against surgeons; and in which they are held responsible for "imperfections resident not in themselves, but in their art."

Elwell, after referring to a case in which a surgeon, having been unsuccessfully and unjustly prosecuted, abandoned the practice of surgery, adds that he "knows many able surgeons, who, being men of property, will not risk it in the practice of surgery." * * * "There can hardly be found a place in the country, where the oldest physicians in it have not, at some periods of their lives, been actually sued or annoyingly threatened." (p. 83.)

In the case of Leighton *vs.* Sargeant, tried in one of the New Hampshire courts, the Judge remarked, "At the present time it is to be feared, there is a tendency to impose some perilous obligations, beyond the requirements of the law, upon medical men."

Why is it, then, that while the general laws defining responsibilities and regulating practice are the same in regard to every profession and art, we alone should be held to a special and exceptional accountability? Why is it that the lawyer is so seldom prosecuted for having given bad advice; and which being followed, has resulted in the defeat of his client? Are lawyers so much better exponents of their art than we are? Are their opinions and practices always sound or infallible? Why is it that the artisan is so seldom prosecuted for damages when his unskillful labors result in loss to his employers? Why are not clergymen prosecuted for malpractice, when it is notorious that their omissions of duty or their actual teachings send not a few souls to perdition?

We shall take the liberty of assuming that lawyers commit errors more often than we do, not because they are less qualified, but because of the peculiar nature of their calling. In most cases surgeons and physicians are agreed upon the proper practice, but in nearly all cases of law the opposing counsel entertain, or at least give conflicting opinions, and one must be wrong. They are often wrong, even upon points of law. This cannot be denied. Yet they are seldom held responsible in a prosecution for these errors of opinion and practice.

I shall not attempt to answer these questions. Yet they are grave questions which interest us all deeply, and which courts of law are bound to consider; and to whatever conclusion

they may arrive, they will never do our profession the injustice to say that the physicians and surgeons in this country are not as thoroughly educated and as well qualified to practice in their departments as lawyers are in theirs. They have never said so, nor do we think they are likely to say so.

My purpose is especially to inquire why it is that a particular department in surgery is made the object of prosecutions more than all others. Why does it happen that so large a proportion of the suits against surgeons arise from the treatment of fractures and dislocations? Is it because in this branch surgery is less advanced than in any other branch? or because surgeons have failed to inform themselves as fully; or, in other words, because they have failed fairly to represent in their practice what is really known to our science upon this subject? In short, are they less skillful, less diligent, and less careful here than in the treatment of stone in the bladder, cancer, and a multitude of other diseases and accidents, for which prosecutions are seldom instituted?

The treatmeet of fractures is, in a great measure, mechanical; and if there is anything in which Americans excel, it is in mechanics. In the mechanical arts we are in fair competition with the world. European surgeons have long conceded to us excellence in surgery; and in the study and treatment of fractures they have often conceded to us superiority; especially have these acknowledgment been made to us during the last quarter of a century. When I first undertook to make a special study of this subject, I found that while our surgeons had carefully studied and often used the apparatus of foreign surgeons, they had in most cases modified the apparatus of Desault, Boyer, Amesbury, Cooper and others, or they had invented entirely new forms of apparatus and of dressings most of which were plainly improvements. Witness, especially, Crosby's adhesive plaster extension, and the weight and pulleys as applied by Buck. These two inventions, in themselves alone, marked an era in the successful treatment of fractures of the thigh.

To what then shall we ascribe the frequency of these prosecutions in the case of fractures and dislocations?

To my mind it is plain that, in the absence of any other

condition of peculiarity, as distinguishing this department from other departments in surgery, we must ascribe it to the fact, that we did not know ourselves the deficiencies of our art in this regard. We did not know its necessary imperfections; and we not only believed, but we constantly taught that we were able to make broken limbs more perfect than we actually could make them. We greatly under-estimated the difficulties of diagnosis and of treatment in both fractures and dislocations.

In my early days I was disposed to lay most of the blame upon lawyers. I supposed that a certain class of pettifogging lawyers hunted up these cases and incited the people to prosecutions. But I have changed my mind upon this point. Perhaps they are in some degree responsible; but I am convinced that the responsibility rests mostly with ourselves. Many writers upon surgery, and most practical surgeons, have claimed too much. They declared that they could do many things which they could not; and their patients have simply taken them at their word, and required of them damages when they have fallen short of their own claims and promises.

My friend, Mr. Bell, interrupts me to say, that in matters of law the people expect them to perform impossibilities. Perhaps lawyers can do this; but my experience is that in medicine and surgery we cannot, and that it is not the part of prudence to claim that we can. At all events, if we do so, and failing we receive censure, we shall have no one to blame but ourselves.

Observe now that in every department of surgery, except in that relating to fractures and dislocations, we have fortified ourselves with ample and carefully studied statistics as to the probable success of the various operations, and procedures. Our books supply us with accurate statistical information as to the relative success of each mode of operating for cataract, and even measure the amount of vision which success implies. It is the same with laryngotomy and treacheotomy in cases of croup. We know just what is the average success for every year of life. It is the same with paracentesis thoracis, with æsophagotomy, with herniotomy, ovariotomy, lithot-

omy, lithotrity, urethrotomy, with operations for all the various forms of tumors and of cancer. In amputations we know what is the chance of success for each limb of the body and for each fraction of a limb. These facts being known, no one expecting to be believed, or hoping to be respected, pretends that in his hands deaths and failures never occur. If he does he must present new procedures, such as has never before been thoroughly tried, and the testimony must be circumstantial, full and patent to all.

In relation to fractures and dislocations alone, has there been, from the earliest periods, an omission to supply similar statistics.

I must be pardoned, gentlemen, for an allusion to my own labors in this direction. Never in the history of surgery, so far as I know, was this undertaken until it was undertaken by myself. On the one hand, a majority of the most experienced surgeons, such as Chelius, Valpeau, Nelaton, John Bell, Benjamin Bell, had spoken very frankly and honestly upon this subject. Malgaigne especially had alluded to the practice of certain "pretenders" of overstating their success in the treatment of fractures; but no one based his assertions upon carefully recorded and tabulated experience. From hospitals there was occasionally issued a report giving the number of fractures treated and cured; but in no case were we informed as to the nature of the cure, the amount of shortening, deformity, &c. It was this fact which prompted Johnson's reply to Radley, who treated all fractures without splints. "That a cure took place we do not doubt, but the information we would most desire would be on the length of the cured limb, and on a few other matters of that sort."

On the other hand, there were a few, both in this country and abroad, who affirmed that in their hands broken bones were always restored to their original perfection, and if it ever happened otherwise it was the fault of the patient and not of themselves; and in the courts of law these men often appeared as witnesses against their unfortunate brethren.

Under these circumstances I would not have ventured to publish in full the results of treatment in my own practice without at the same time giving the results in the practice of

others. I was not prepared to make so great a sacrifice ; nor, indeed, would it have been accepted as authority unless indorsed by the like experience of other good surgeons.

After having recorded and tabulated my own cases, I visited the hospitals in New York, Philadelphia, and other large cities, and obtained permission to examine all broken bones then under treatment or remaining in the hospital. I examined all such cases as my brother practitioners permitted me to examine, including cases of old fractures, as well as new. Museum specimens were carefully measured at home and abroad. Fortified by the testimony thus obtained, the results were tabulated and published. The first, comprising only 136 cases, were published in the *Buffalo Medical Journal* for April, 1849. In 1853, Dr. John Boardman, of Buffalo, compiled from my notes additional cases, 461 in all, and published the same in pamphlet form. In 1855, by request of the American Medical Association, I began a series of papers, under the title of "Deformities After Fracture," which were published in the transactions of the Society for the years 1866–7–8, giving a detailed history of 605 cases, with their final results.

That these investigations had not been seriously undertaken by any other writers, that they were necessary as a first step in the further advance of this branch of surgery, and that they met the approval of the profession, it may be proper for me to show by a reference to other testimony than my own.

Says Ewell : "Except ten able reports of Professor Hamilton upon 'Deformities After Fractures," made to the American Medical Association, and where now and then a case has found its way into the medical periodicals, this subject is scarcely alluded to in the whole range of medical literature." (p, iv.)

"The labors of Professor Hamilton are herculean, and the results of great practical importance to the surgeon." (p. 86.)

Professor Dawson, in a report on Surgery, made to the Ohio Medical Association, in connection with some very kind and complimentary remarks in relation to my labors, says : "Deformities, shortening, &c., of course escaped the atten-

tion of no one who had any experience in surgery; yet, strange as it may seem, only an occasional hint, or some accidental remark with reference to the subject, is the most that has been recorded. No attempt upon anything like an extensive collection of cases has been made, to state what have been the usual results of fractures; what proportion of all the cases treated has been dismissed perfect," &c.

"This is one of the most valuable contributions ever made to American surgery * * * We now know the usual amount of deformity in cases of fractures when treated skillfully, and a long-felt desideratum is supplied."—*New York Journal of Medicine*, 1858

These are a few of the many responses made to the publication of histories and statistics which I had feared would provoke only criticism and censure; but I am happy to avail myself of this opportunity—the only one in which it has seemed proper to to me to do so—to thank my professional brethren for the cordial support which they everywhere gave me. So far as I know there was not a medical journal, either at home or abroad which questioned either the accuracy or the value of these reports.

For a time there was a comparative infrequency in prosecutions; and those which were instituted were less often successful. So I am informed by lawyers, and surgeons have often said the same thing to me. Up to a recent period this decline in prosecutions has been everywhere noticed, and made the subject of comment, but prosecutions are again becoming frequent, and this fact calls for an explanation.

In the lapse of time—as year has succeeded year, and month succeeded month—indeed, in almost every week of the year, there has been presented through the medical journals some new or modified plan of treating fractures. In almost every instance it is distinctly claimed that the results of treatment by these new methods are better than have hitherto been attained; and in very many instances it is claimed that the results attained have been invariably perfect. No doubt some real improvements have been made, and we are making steady but slow progress in the right direction. My own plans of treating most fractures have been modified and changed from

time to time, as a reference to the successive editions of my Treatise on Fractures and Dislocations will show. But a large proportion of the new or modified methods are not real improvements, and cannot be adopted notwithstanding their inventors claim so much for them. They do not stand the test of experience. We are still unable to make perfect femurs in all cases, or perfect clavicles. In fact, imperfection in all forms of fractures is still the rule, and perfection the exception.

Let us see, then, what is the natural or inevitable effect of this teaching. Let us see what must come of these exaggerated and unjust claims, if their authors' statements are believed by the people. If, in any case of fracture, we shall hereafter adopt a plan of treatment which was in use twenty years ago, and the result is not a perfect limb, we shall be held responsible for having selected a plan known and admitted to be imperfect. If, on the other hand, we adopt one of the new methods so much vaunted, and fail, as we probably shall, we shall be charged with unskillful use of the new method. The error will be, in the latter case, not in the choice of appliance, but in the choice of surgeon. This is all right, if what these men say of their appliances and skill is true ; but if it is not true, then their untruths are cruelly oppressive, and their authors deserve at least reproof. If they have blundered into these errors, they are scarcely less reprehensible than if they had made these assertions knowing them to be false, and solely for the purpose of making for themselves a reputation at the expense of others. Subjects of so much importance as these admit of no loose, reckless and blundering statements. The labor which one such false statement costs, in order that it may be disproven and the truth brought to the surface, can searcely be estimated. It is sometimes immense. You see, then, what teachers of this kind cost to the world at large, and how they retard the progress of science.

What then is to be done ? Men have never ceased, and never will cease, to do this thing ; and by many their statements will always be believed. What you have to do is this—you will have to begin again where the work was begun

thirty years since. Some one will have to sacrifice himself for the public good, and prove by his own failures that others, with the same appliances and with no more genius than he possesses, must have made failures also. All the ground must be gone over again; and this will have to be done every quarter of a century, so long as human nature remains the same.

Finally, the answer to the note inquiring how a surgeon who practices skillfully and carefully his profession shall protect himself against unjust prosecutions for malpractice, is: The profession and the world must be taught to understand that the science of surgery has not yet attained perfection, and no more in the department relating to the treatment of fractures than in any other department. They must be taught also, as nearly as possible, what that degree of imperfection is.

One thing more I wish to say before I close. I am often quoted as saying that all broken bones must shorten. If those who quote me will read my writings they will find that I have never said anything of the kind, or anything which could bear this construction. I have had a great many bones unite in my own experience, in both public and private practice, without any shortening or deformity; probably quite as many as any other surgeon.

I will detain you no longer; I am the more willing to relinquish the floor because I see before me a gentleman, Dr. Stephen Smith, who has given much attention to this subject, and because I would like to hear the opinion of the lawyers who are present, and who must be able to give us much useful information upon the matter of civil malpractice suits, their causes and their remedies.

NOTE.—I have lately received a small and very interesting volume on "Civil Malpractice," by M. A. McCLELLAND, M. D., of Knoxville, Ill., in which the author remarks: "In respect to surgical cases that are investigated in our Courts, how frequently we hear surgeons—experts—boasting of the cures they have effected in similar cases: no shortening, no deformity in their experience; leading the Courts, leading Jurors, leading every one within the sound of their voice to suppose that perfect cases were and should be the rule, and imperfect cures the exception. How far such statements are borne out by facts we all well know." (p. 8) "In the language of a former President of this Society, (Dr. Reece), we can stop these unjust prosecutions by being candid in regard to our own deficiencies, claiming no more than we can perform, no more knowledge than we possess,' &c (p. 9.)

Says Mr. Holthouse, in "Holmes' Surgery," p. 866, Vol. IV., Second Ed.: "Surgeons are still to be found hardy enough, or ignorant enough, to repeat the fallacies which have been so often refuted, and to vaunt their success in the cure of oblique fractures in the adult, without shortening. Why do not these surgeons, instead of publishing their cases in the journals, produce their patients at some of the medical societies?"

SUICIDE;

HISTORY OF THE PENAL LAWS RELATING TO IT IN THEIR LEGAL, SOCIAL, MORAL AND RELIGIOUS ASPECTS, IN ANCIENT AND MODERN TIMES.

By R. S. GUERNSEY, Esq.

The subject of suicide, as it has been viewed at various times and in various nations, is important as well as remarkably interesting.

Penal laws are commonly called criminal laws, and are for the sole purpose of the protection and welfare of the body politic—the state and its members; and penalties are prescribed by the law-making power with that end in view.

I do not use the word *penal* here in its narrow legal sense, but in the broad sense of *penalty* of every kind and nature, legal, social, moral and religious, in connection with this subject.

The importance of the subject strikingly appears by comparing the statistics of homicide in the United States as given in the census of 1870. The table also shows by means of colored parallelograms the positive and relative degrees of homicide and suicide in different parts of the country as well as in each State In the eastern States suicide appears to be about six times as frequent as murder. In the western States

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there is a larger portion of murder and about two-thirds less of suicide. The north presents a broad field of homicides, nearly twice as large as that of all the rest of the country, with a very narrow strip of suicides. Allowances should be made for the unsettled condition of the government in the southern States at the time covered by these statistics. In New York and New Jersey suicide is about three to one of murder; and in Pennsylvania, about two to one. The proportion of suicides to murders is always in excess in all countries. From the above it appears that man is literally his own worst enemy, when taken in the aggregate in a community.

As the punishment of a sucide can only act upon that which he has left behind him—his reputation and his fortune, and its effects upon his relatives and friends, no little difficulty has been experienced and ingenuity displayed as to how this would be the most effective as a preventative of this loss to the State, as it has been almost universally regarded.

In the famous essay by Beccaria on "Crimes and their Punishment," first published in Naples, in 1764, he thus discourses on this subject:

"Suicide is a crime which seems not to admit of punishment, properly speaking, for it cannot be inflicted but on the innocent or upon an insensible dead body. In the first case, it is unjust and tyranical, for political liberty supposes all punishments entirely personal; in the second, it has the same effect, by way of example, as the scourging a statue. Mankind love life too well; the objects that surround them; the seducing phantom of pleasure and hope, that sweetest error of mortals, which make men swallow such large draughts of evil mingled with a very few drops of good, allure them too strongly, to apprehend that this crime will ever be common from its unavoidable impunity, The laws are obeyed through fear of punishment, but death destroys all sensibility. What motive, then, can restrain the desperate hand of suicide? He who kills himself does less an injury to society than he who quits his country forever, for the other leaves his property behind him, but this carries with him at least a part of his substance. Besides as the strength of a society consists in the number of citizens, he who quits one nation to reside in

another, becomes a double loss. This then is the question whether it be advantageous to society that its members should enjoy the unlimited privilege of imigration ?"

"If it be demonstrated that the laws which imprison men in their own country are vain and unjust, it will be equally true of these which punish suicide, for that can only be punished after death, which is in the power of God alone ; but it is no crime, with regard to man, becausecd the punishment falls on an innocent family. If it be objected that the consideration of such a punishment may prevent the crime, I answer, that he who can calmly renounce the pleasure of existence, who is so weary of life as to brave the idea of eternal misery will never be influenced by the more distant and less powerful considerations of family and children."

It is truly astonishing that so thoughtful a man as Beccaria should thus combat the reason, observation and experience of ages, and even the dictates of every heart who has any relatives or dear friends whose feelings of grief or shame are thought of or cared for above a feeling of revenge or sudden passion.

Popular opinion has always been against it in proportion to its prevalence, because no one knows when or who may be stricken down by this dreadful means if it is not discouraged.

There are two classes of voluntary deaths ; one may be termed the vicious and criminal, which is that suicide by which a man under the influence of selfish impatience or apprehension withdraws himself from them by death. The other is where life is sacrificed in the observance of duty or in the practice of virtue, and then it must be for others; in other words, it must be a martyrdom or heroic death, voluntarily imposed, in order to be justifiable.

When it was suggested to Flavius Josephus the Jewish christian and warrior to destroy himself, he replied : "Oh ! my friends, why are you so earnest to kill yourselves ? Why do you set your soul and body, which are such dear companions, at such variance ? It is a brave thing to die in war, but it should be by the hands of the enemy."

The Mosaic law contained no penalty against self-destruction. The first instances of suicide recorded in Jewish his-

tory are of Saul and his armour-bearer, 1055 years before the Chtistian era. Samson's death cannot properly be called suicide,and there is but one other recorded in the Bible,being that of Anhitibel. Public opinion was against it among the Jews. It was their custom to bury all executed criminals on the day of their death, at sunset, by the officers of the law, without any ceremonies and not in the family sepulchre. The bodies were buried and kept until the flesh was consumed, the bones were then given to the relatives to be interred among the family graves. It was regarded as a very great punishment not to be buried by relatives and friends and not to have great ceremony, according to wealth and rank, and not to be buried with their fathers—they abhorred being "buried like an ass," as their writers expressed it. It is probable that in olden times suicides were buried by them like criminals.

Among the ancient Jews if a man was found guilty of a capital offense and condemned to be hanged, his body was not to remain after sunset on the tree, but, says the Mosaic law, "Thou shalt bury him that day, that thy land be not defiled, for he that is hanged is accursed of God."

In the time of Moses and under the custom and laws which prevailed during the period mentioned in the old testament, many of the criminals and suicides who had no relatives or friends to look after their burial, may have been literally "buried like an ass," that is, an outcast without friends, and perhaps unknown. For a description of such a burial place see title "Gehenna," in Chamber's Cyclopedia."

The Jews seldom mourn for such as are suicides or who die under excommunication. So far, indeed, are they from regretting the loss of them, that they set a stone over the coffin to signify that they ought to be stoned to death, if they had their deserts for thus violating the law of God and doubting His promises. This punishment of stoning to death was administered in cases of blaspheming and heresy, and many of the capital crimes, among the ancient Jews.

Josephus mentions that in Judea the body of a suicide was only buried at sunset, he was then denied the usual burial ceremony. Suicide never was frequent among them, for if it had been it would have been more often mentioned and there

would have been a more general law or declaration against it, for the Jews were particularly watchful for the welfare of the State and the preservation of its members. Saul's death was regarded as if he had been killed in battle by his enemies—as his wounds were fatal, and he had rather die than be taken captive.

The modern Jewish law is the same now as it was for some centuries before the Christian era.

The fashionable mode of suicide among the Jews seems to have been by throwing themselves from the roof of a house. The act must be deliberate. If a person immediately after declaring his intention to commit self-destruction was seen to ascend the roof of a house and throw himself off he was deemed a suicide. But, any one who is found dead, no matter if he be strangled, hung on a tree, or stabbed with a sword, he is not deemed a suicide. A murderer, overtaken by justice and confined in prison, who is after a while found dead in his cell, is not to be treated as a suicide under the law. A child or an idiot who kills himself is not treated as a suicide under the law, nor is the adult who is driven to the act under circumstances like King Saul. But only he can be treated as a suicide under the law who has previously, while in a sane state of mind, declared his intention to destroy himself.

Says a standard work on their laws:

"If any one in anger shall be seen to throw himself from the roof of a house, or to commit suicide, there shall be no mourning observed, nor keriah (rending of the garments), nor any office performed in honor of the dead, as in other cases. None of the rules of mourning is to be observed." He is not eulogized—the garments are not cut, the shoes are not removed, etc.; but all that is usually observed to comfort and to sympathize with the relatives is permitted.

Among the Jews, suicides and murdered persons are buried in the clothes they have on when they die.

In some of the Oriental countries suicide is in some instances not only legal, but esteemed to be meritorious; and this is said to be on the authority of the ancient sacred books of the Hindoos.

In India, the self-sacrifice of widows and self-immolation

under the car of Juggernaut are now prohibited by the British government.

In China, self-destruction is no crime, and it has been so for thousands of years. It is a favor to allow a condemned criminal to be his own executioner.

In Japan, self-destruction is not only frequent but is considered meritorious in many instances. When an official has committed an offense, or even when there has been in his department a violation of law, although beyond his power of prevention, in order to avoid capital punishment, (which extends to the slightest offenses) he anticipates it by disemboweling himself. By this act of self-destruction he saves his property from forfeiture and his family from death. With many of the high officials it is a point of honor thus to kill themselves, on any failure in their departments, and their sons are often promoted to high rank as a reward for the father's compliance with the established usage.

If these customs were introduced here in similar cases by officials we would probably have a more faithful administration of public trusts. Suicide would then undoubtedly be more frequent than now, but the public would have less reason to lament its occurrence and example than at present.

By the Code Annamite, translated from the original Chinese in 1865, by which Cochin China is at present ruled, and is entirely founded on the model of the code which now governs China, it particularly provides for those who desire to commit suicide in order to spite other people. "Every wife of a hard and disagreeable character," declares this Chinese code, "who has caused her husband such vexations that he has committed suicide, will be condemned to immediate strangulation." "The persons who drive another to suicide by words or acts are to be capitally condemned." "The punishment inflicted on persons who, by reason of their health or any influence or power they may possess, are of a tyranical character, and who consequently insult or oppress quiet persons, so that the latter out of despair commits suicide, shall be decapitation."

The desciples of Zeno, the Stoics, held that self-destruction when not caused by despair is not necessarily immoral, is

frequently praiseworthy, and under certain circumstances is even prescribed by duty, yet the corpse of the suicide according to old usage remained unburied.

In the early part of the Christian era the bodies of suicides were left unburied by them, they believing that the soul would still linger around it and share its ignominy until it was buried, which was generally done after all means of identification had disappeared. As stoical philosophy advanced in popular estimation this custom ceased.

The stoical system of ethics was, in the highest sense, a system of independent morals. It taught that our reason reveals to us a certain law of nature, and that a desire to conform to this law, irrespectively of all considerations of reward or punishment, of happiness or the reverse, is a possible and a sufficient motive of virtue. It was also in the highest sense a system of discipline. It taught that the will, *acting under the complete control of the reason*, is the sole principle of virtue and that all the *emotional* part of our being is of the nature of a disease. Its whole tendency was therefore to dignify and strengthen the *will*, and to degrade and suppress the *desires*. It taught, moreover, that man is capable of attaining an extremely high degree of moral excellence; that he has nothing to fear beyond the present life; that it is essential to the dignity and consistency of his character that he should regard death without dismay, and that he has a right to hasten it if he desires.

The ancient Greeks and Romans were by no means unanimous in their approval of the liberty to commit suicide. Pythagoras is stated to have forbidden men "to depart from their *guard* or station in life without the order of their commander—that is of God." Plato adopted similar language, though he permitted suicide, when the law required it, and also when men had been struck down by intolerable calamity. Aristottle condemned it on *civic* grounds as being an injury to the State. Virgil painted in the darkest colors the condition of suicides in the future world. Cicero strongly asserted the doctrine of Pythagoras, though he praised the suicide of Cato. Apuleius, expanding the philosophy of Plato taught that "the wise man never throws off his body except by the

will of God." Cæsar. Ovid, and others, admitted that in extreme distress it is easy to *despise* life, but urged that true courage is shown in *enduring* it. Virgil described the souls of suicides in the future life in a depreciative manner.

According to Euripides, Herecules said: "I have considered, and though oppressed with misfortunes, I have determined thus; Let no one depart out of life through fear of what may happen to him; for he who is notable to resist evils will fly like a coward from the darts of an enemy."

Cicero brings before us a passing notice of Hegesias who was surnamed by the ancients, "the orator of death." His eloquence was so intense and fascinating in regard to the tomb and the future life, that multitudes freed themselves, by suicide, from the troubles of the world, and sought happiness beyond the grave, and the contagion was so great that Ptolemy, it is said, was compelled to banish the philosopher from Alexandria.

As a general proposition the law recognized suicide as a right, but slight restrictions arose from time to time. Seutonius speaks of Claudius accusing a man for having tried to kill himself. Ziphilin says that Hadrian gave special permission to the philosopher Euphrates to commit suicide "on account of old age and disease."

A very strange law, said to have been derived from Greece, is reported to have existed at Marseilles. Poison was kept by the Senate of the city and given to those who could prove that they had sufficient reason to justify their desire for death and all other suicide was forbidden under penalty of disgrace to their remains. The law was said to be intended to prevent hasty suicide and to make deliberate death as rapid and painless as possible.*

There was some sound philosophy in this law as the following anecdote will illustrate:

A French cobbler had resolved to commit suicide; and, to

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* In nearly all European countries and in many of the American States there are laws regulating and restricting the sale of poisons, the objects of which in part are to prevent hasty suicides by such means, as it is the most prevalent choice of self-destruction. In France and Germany the laws are very stringent in this particular.

make his exit more heroic, prepared the following memorial in writing · "I follow the lesson of a great master, and as Moliere says,

When *all* is lost and even *hope* is fled—"

He had just written *thus far* and applied the fatal knife to the *carotid* artery, when suddenly recollecting, he stopped, and said to himself: "Eh ! but is it Moliere who says so ? I must make sure—if not, I shall be laughed at." He now got Moliere, read a few comedies, changed his mind, and returned to his cobbler's bench.

Pythagoras forbade suicide among the Greeks. By the law of Thebes suicides were to have no honors paid to their memory.

The Athenian law ordained that the hand which attempted or committed the deed be cut off and *burned* apart from the body.

Plutarch informs us that an unaccountable passion for suicide seized the Milesian virgins. A decree was issued that the body of every young woman who hanged herself should be dragged *naked* through the streets with the same rope with which she had committed the deed. As it was not fashionable to commit suicide in any other manner, this effectually stopped it.

By the Roman jurists neither suicide or self-mutilation was, as a rule, regarded as criminal either in consumation or attempt. They sometimes expressed the qualification that the consent of the Senate or Emperor was necessary to *justify* suicide.

The first Roman Law occurs in the reign of Tarquinius Priscus, the Vth King of Rome, about 606 years before Christ. The soldiers who were appointed to make drains and common sewers, thinking themselves disgraced by such servile offices, put themselves to death in great numbers. The king ordered the bodies of all self-murderers to be exposed on crosses in the public places. This put an end to it.

A réscript of Hadrian, (the XVth Emperor of Rome) about 117 years before Christ, expressly directed that these soldiers, who, either from impatience of pain, from disgust of life, from disease, from madness, from dread of infamy or disgrace,

had wounded themselves or otherwise attempted to put an end to their life should only be punished with ignominy. But the attempt of a soldier at self-destruction on *other grounds* was a capital offense and likened to desertion Persons being under prosecution for heinous offenses or being taken in the commission of a great crime, who put an end to their life to escape punishment, forfeited all their property to the *Fiscus.* It was not otherwise forbidden.

It had become customary with many men, in Rome, who were *accused* of political offenses, to commit suicide before trial, in order to prevent the ignominious exposure of their bodies and the confiscation of their goods. This deprived the emperor of a large source of revenue, and Domitian, about A.D. 80, ordained that the suicide of an accused person should entail the same consequences as his condemnation.

Tacitus says that Tiberius, about the beginning of the Christian era, gave an encouragement to criminals to become their own executioner.

In a law of Mark Anthony, which is still in the Roman law, we find it written, "If your brother or your father being convicted of no crime hath put himself to death, either to avoid pain, or being weary of life, or from despair or madness, his will shall, nevertheless, be valid; or, if there is no will, his heirs inherit according to law."

In Justinian's Pandects, made about A.D. 533, there is a law "that if persons accused or who have been found guilty of any crime, should make way with themselves, their effects should be confiscated." But this only took place when confiscation of goods happened to be the penalty appointed by the law for the crime of which the suicide was found guilty. By *custom* it was inflicted on suicides in any other circumstances.

The learned Grotius in his famous work on the Law of Nature and of Nations, published two centuries and a half ago, thus speaks of suicide :

"The rule that prevailed among the Hebrews with respect to burying the dead, contained an exception, as we are informed by Josephus, excluding those who had committed suicide. Nor is it surprising that a mark of ignominy should be

affixed to those on whom death itself connot be inflicted as a punishment. Aristotle, in the 5th book of his Ethics speaks of the infamy universally attached to suicide. Nor is the observation at all weakened by the opinions of some of the Grecian poets, that as the dead are void of all perception, they cannot be affected either by loss or shame. For it is a sufficient reason to justify the practice, if the living can be deterred from committing actions for which they see a mark of infamy set upon the dead.

"In opposition to the Stoics and others who admitted the dread of servitude, sickness, or any other calamity, or even the ambitious love of glory to be a just cause of voluntary death, in opposition to them, the Platonists justly maintain that the soul must be retained in the custody of the body, from which it cannot be released, but at the command of Him who gave it. On this subject there are many fine thoughts in Platonus, Olympiodorus, and Macrobius on the dream of Scipio.

"Brutus, following the opinions of the Platonists, had formerly condemned the death of Cato, whom he himself afterwards imitated. He considered it as an act of impiety for any one to withdraw himself from his allegiance to the Supreme Being, and to shrink from evils which he ought to bear with fortitude. And Megasthenes, as may be seen in Strabo, book 15, remarked the disapprobation which the Judean sages expressed of the conduct of Calanus; for it was by no means agreeable to their tenets, that any one, through impatience, should quit his post in life. In the 5th book of Quintus Custius there is an expression of King Darius to this effect, that he had rather die by another's guilty hand than by his own. In the same manner the Hebrews call death a release, or dismission, as may be seen not only in the Gospel of St. Luke, chap. 2, verse 19, but in the Greek version of the Old Testament, Gen. 15 verse 2 and Numbers 20, towards the conclusion, and the same way of speaking was used by the Greeks. Plutarch, in speaking of consolation, calls death the time when God shall relieve us from our post."

The attitude which the teachings of antiquity, and especialiy of the Stoics on the one hand and of almost all modern

moralists, (for Christianity now colors all modern moral philosophy,) on the other, in regard to their conception of death, appears very plainly in their view of suicide. For this modern view of it among us we are indebted to the great Roman Catholic Church.

The doctrine of future rewards and punishments which is so prominent in the New Testament and the Koran, is the foundation upon which it was mainly built in religion.

It is true that among the early Christians there prevailed a sort of ambition for martyrdom to such an extent that it sometimes became suicide. Tertulian, one of the early church fathers who lived in the second century, said : "The blood of the martyrs is the seed of the church." In that age many dying men deplored the natural death, which robbed them of the honors of martyrdom. It was carried to such an extent that later on the heads of the church condemned it as the fruit of misguided zeal, but the people considered it with reverence.

A council of Arles, about the middle of the fifth century, having pronounced suicide to be the effect of "diabolical inspiration," a council of Braga in the following century ordained that no religious rites should be celebrated at the tomb of a suicide, and that no masses should be said for his soul.

It was ordained in the sixth century by the Canon law tha no commemoration should be made in the Eucharist for such as destroyed themselves, neither should their bodies be carried out with palms nor have the usual service read over them. Suicide and attempting suicide were to be treated as infamous, and as far as possible amenable to penal discipline, and a suicide is considered as having "died in mortal sin," and could never enter the Paradise of the blest.

And these provisions, which were repeated by later councils, were gradually introduced with the Canon law into the laws of the barbarian and of Charlemagne. Thus they were spread all over Europe.

About the middle of the thirteenth century St. Lewis IX., king of France, and an ardent crusader, originated confiscation of property to the heads of the church, and the corpse

was subjected to gross and various outrages. In some countries it could only be removed from the house through a perforation specially made for the occasion in the wall; it was dragged upon a sledge or hurdle through the streets, hung up with the head downwards, and at last thrown into the public sewer, or burnt, or buried in the sand below high-water mark, or transfixed by a stake on the public highway, at cross-roads in the same manner as that of an executed criminal.

The ferocious laws here recounted contrast remarkably with a law in the Capitularies of Charlemagne, which provides that though mass may not be celebrated for a suicide, any person may, through charity, cause a prayer to be offered up for his soul.

The reasons for this great change which the Canon law made were not merely ethical and *spiritual* but *political*. There could be no patient endurance in the state, it was insisted, unless there was patient edurance in the citizen. If the people should resort to suicide to escape trouble, so would the state, and all social order and safety would be at an end.

During the whole period of the supremacy of the Church of Rome for many centuries the act was more rare than before or since. The influence of Catholicism was seconded by Mohammedanism which on this, as on many other points, its teachings are similar to those of the Christian Church, and even intensified in this case—for suicide, which is never expressly condemned in the Bible, is more than once *forbidden* in the Koran,* and the Christian duty of resignation was exaggerated by the Moslem into a complete fatalism similar to the Calvinistic doctrine of predestination. Under the government and influence of Catholicism and Mohammedanism suicide, during many centuries, almost absolutely ceased in all the civilized, active and progressive part of mankind. †

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* It was contended by some of the leaders of the church that suicide was prohibited by the commandment, "Thou shalt not kill." St. Augustine argued that he who kills himself kills a man. The Koran also says, "Thou shalt not take the life thou cannot give."

† It should be remembered that about this time monastic life was very prevalent and its solitude was undoubtedly resorted to in many cases as a substitute for suicide. If despairing and suffering humanity was thus cut off from the clouds and storms of life, they also lost its brightness and the sunshine which is derived from social life.

The Roman Catholic religion was established by law in all the countries in Europe, and the Canon laws had the same force and effect as any other laws.

In all governments where Church and State are united the ordinances of the Church are always carried out and enforced by the State power.

Where Church and State are separated the rules of the church are permitted to have their full force unless there is a positive statute that may effect them.

In Russia, where the Greek Church is the established church its priests class as suicides all persons who kill themselves by the excessive use of stimulants. *

The position which the Roman Catholic Church and its propagators took in its early days and in its strength and vigor, is still maintained by it, and its two main branches, the Greek Church and the Protestant Episcopal Church. In all these churches clergymen and others are prohibited, under penalty of excommunication and suspension, reading the burial service and rites over the body of any person who has laid violent hands on himself, whether that of a communicant or not. But this rule does not apply to insane or weak-minded persons; and clergymen and priests argue that no sound-minded person will commit suicide, or at all events there is a doubt about it, and they, in Christian charity, give the deceased the benefit of such doubt, so that the Church prohibition practically amounts to nothing. A refusal to perform the burial rites of those churches or any other church over the body of a suicide for that reason is almost unknown in the United States.

The statute law in England prohibits any funeral rites of any church in *all cases*.

The old Germanic law adopted the same principle as the Ecclesiastical law.

Some of the present German codes are silent on the subject, to wit.: the Bavarian and Saxon.

The Austrian code only provides that the body of a suicide

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* In 1881 this ordinance of the Church in Russia was changed so that they are not now classed as suicides.

shall be buried by the officers of justice, but not in a church yard or other place of common interment.

The Prussian code forbids all mutilation of the dead body of a suicide under ordinary circumstances, but declares that it shall be buried without any marks of respect otherwise suitable to the rank of the deceased, and it directs that if any sentence has been pronounced, it shall, as far as it is feasible, be executed, on the dead body, due regard being had to decency and propriety. The body of a criminal who commits suicide to escape the execution of a sentence pronounced against him is to be buried at night by the common executioner at the usual place of execution for criminals.

France has no provision in her penal codes for the punishment of suicides, deeming the Church penalties sufficient punishment to deter them. Experience shows that it apparently has little effect in that direction.

In the Reign of Terror, in France, a law was made ordaining that the suicide of an accused person should entail the same consequences as his condemnation in regard to the disposition of the body and the confiscation of property.

While Bonaparte was First Consul in 1802, a grenadier of the French consular guard was disappointed in love and committed suicide by shooting himself. When Bonaparte heard of the transaction, in order to prevent such a cowardly practice from spreading among the troops, he directed the publication of the following :

"The grenadier, Grablin, has committed suicide from a disappointment in love He was in other respects a worthy man. This is the second event of the kind that has happened in this corps within a month. The First Consul directs that it shall be notified in the order of the day Guard, that the soldier ought to know how to overcome the grief and melancholy of his passions; that there is as much true courage in bearing mental affliction manfully as in remaining unmoved under the fire of a battery. To abandon oneself to grief without resisting, and to kill oneself in order to escape from it, is like abandoning the field of battle before being conquered."

We have before seen that the Roman Emperor, Hadrian, assimulated the suicide of a soldier to desertion.

In Denmark, the only penalty is that the body is not allowed to be buried in consecrated grounds or churchyards.

In Norway, the only penalty is that the body is not to be buried in consecrated ground, but this does not apply to a *non compus mentis*, and therefore the law is practically of no effect.

Sweden, like many other European countries, has no statute law on the subject of suicide.

In many other European states, where there is no law on the subject, the *practice* is to treat the body the same as that of an executed criminal. This arose in the Church and under the Canon law when the Church of Rome was the prevailing religion throughout Europe, and was united with the State, and its ordinances were enforced as State laws.

The immorality of suicide was discussed at considerable length by Abelard in the eleventh century, and by St. Thomas Aquinas in the thirteenth century.

Dante and Dryden have devoted some fine lines to painting the condition of suicides in hell, where they are also frequently represented on the bas-reliefs of cathedrals.

In the romances of chivalry, however, this mode of death is frequently portrayed without *horror*, being regarded in the heroic light which prevailed in that age.

When the unhappy Indians in the South American continent were reduced to slavery and treated with atrocious cruelty by their conquerors, they killed themselves in great numbers, until the Spaniards, in order to deter them, declared that their masters also would commit suicide and would pursue their victims into the world of spirits. Thus the poor unfortunate slaves had no hope of rest; they feared the cruelty of their masters in the next world. This deterred them from suicide.

In Cuba, the negroes committed suicide in large numbers, under a religious delusion, believing that they would be restored to life at the end of three days. It was only suppressed by the Governor-General ordering the heads exposed in public for one month, and their bodies burned and their ashes publicly scattered to the winds. (Ro'one de Paris, 29 April, 1845.)

The West African negroes sometimes commit suicide when in distant slavery, believing that they will revive again in their own native land, free from toil and their masters lashes.

Among the North American Indians it was mostly among the squaws, and was by hanging on a tree. They had a tradition that in the spirit land they were forced to drag the fatal tree forever, and hence they would always select the smallest one which would answer the purpose.

Many centuries previous to the Reformation in England, the Canon law was adopted into the statutes of England. And as a further punishment, confiscation of lands and goods followed, this being regarded in the nature of a compensation to the State for its loss of a human being. This latter penalty is said, by Bracton, to have been adopted from the Danes, where it had previously existed. It may have been derived from the Canon law and the Roman civil law, in both of which it had been used many centuries before, as we have seen. The English statute also directed that the remains should be buried in the highway at cross-roads, with a stake driven through the body.

This burial at the cross-roads and without religious rites, was to give as strong an impression as possible of a heathen burial, and also of a criminal act, for the heathen Teutons there executed their caiminals by sacrificing them to the gods on their altars, which were mostly at the junction of the cross-roads and the body was pinned to the earth by an unpainted stake, and passers-by would cast a stone at it.

This mode of disposing of the body of suicides was an ancient custom brought into England by the Saxons and did not prevail in all parts of England. Christian burial was denied suicides in all parts of England, under the Canon law. When they were buried in the parish churchyard they were placed in the most obscure parts of it.

In many churchyards may be seen a row of graves on the extreme verge of the north side of the grave yard, apart from that in which the bodies of the inhabitants in general are deposited. Some of the graves do not lie east and west as do those who have Christian burial. These are occupied by the bodies of still-born infants, suicides and excommunicated

persons, and those who it is termed are "buried out of the sanctuary," because they are not entitled to the church rites of burial.

The first grave-digger in Hamlet, when he asked if the grave should be made "straight," was evidently accustomed to that part of England where a suicide's grave was not made east and west, as the church stood and as other graves run, but was to be made "crooked," or not parallel to them.

Forfeitures for felonies did not exist in England until after the Norman Conquest. Suicide in common with many other felonies had the penalty of forfeiture of goods and chattels without any special mention.

All his goods, and chattels, and leases of real estate, were forfeited to the crown. The real estate (excepting leases), was not forfeited in such case, and his inheritance was not forfeited as to other property. This offence was never attended with corruption of blood.

In this as well as in other felonies at common law the offenders must be of the age of discretion and of sound mind, and therefore an infant killing himself under the age of discretion, or a lunatic during his lunacy, is not regarded as a *felo de se*, so as to work a forfeiture of his property. But the disposition of the remains is the same in all cases.

This was only carried out when the coroner's jury decided the question of the sanity of the offender in the negative. This continued until 1823, when by statute (4 George IV. chap. 52) the body is required to be taken to the churchyard or other burial ground of the parish or place in which the remains are found, and is to be buried by the coroner, if found sane, within twenty-four hours after the finding, and such interment must take place at night between the hours of 9 and 12 o'clock. The rights of Christian burial are not allowed by law in any case of suicide when the coroner's jury decide the deceased to have been sane when the act was committed. This is seldom done, however, and the church officer, the parson, is bound by the verdict and must perform the burial service according to the usual form as in other cases. Churchmen of the Protestant Episcopal Church are very much displeased with this, for by the 68th canon and the rubric in the

Book of Common Prayer such persons are not allowed to be buried by the parson according to the forms of the Established Church. The term Christian burial, as used in the statute, undoubtedly means any religious ceremony at the grave, and is not confined to the Episcopal Church, and the Roman Catholic Church, for they are the only Christian churches that prescribe the burial service which their priests must follow.

Churchmen contend that in all cases of suicide the deceased should be denied the burial rites of the church, and they ought not to be bound by the coroners jury and compelled to perform the rites in such cases.—*Wheatley on Book of Common Prayer.*

Ceremonies over the body were not allowed, but they might be performed by the relatives and friends at their own houses, but without the body and without a priest of the Established Church.

According to the canons of the Established Church of England, no clergyman, only those of the Established Church, are allowed to perform funeral rites and ceremonies in a church or consecrated churchyard or burial ground belonging to the Established Church.

By the canon law Christian burial in consecrated ground and with the religious services prescribed by the Roman Catholic Church was denied to all who were not Christians, to excommunicated persons, suicides, criminals, usurers, schismatics, heretics, and even unbaptized children of Christian parents. The eucharist was celebrated at the grave as one of the rites as early as the fourth century, but it has been generally abandoned.

The part of the canon law against suicides was taken from the action of the first council of Braga, which occurred many years before the canon law noticed it.

The first ecclesiastical rule which occureth as to suicide is the 34th canon of the first council of Braga, in the year 563, which forbids any burial service for those *qui violentan sili ipsis infermet mortem.* But in Wilkin's councils the 5th chapter of the 2d book of the Penetential of Egbert, Archbishop or York, written about the year A. D. 750 (which chapter is

plainly taken from the canon of Braga), adds this limitation, "If they do it by the instigation of the devil." And at p. 232 the 15th of the canons published in King Edgar's time, about the year 960, adds a further limitation, "If they do it voluntarily by the instigation of the devil." (1 Burns, Eccles. Law, 265.) It will be observed that this canon law of Egbert was in the time of the Saxon Heptarchy, but it, nevertheless, applied to all of England.

The Decretum of Gratian inserting the canon of Braga adds to it "voluntaire." (Do.)

Wheatley on Common Prayer, says self-destruction makes no exception as to the use of the forms of burial used by the Established Church.

The exact language of the canons of Edgar, as translated by Wilkins, is as lollows:

"Concerning those who by any fault inflict death upon themselves, let there be no commemoration of them in the oblation, as likewise for them who are punished for their crimes, nor shall their corpses be carried unto the grave with palms."

"If any shall voluntarily kill himself by arms, or by any instigation of the devil, it is not permitted that for such a person any masses be sung, nor shall his body be put into the ground with any singing of a psalm, nor shall he be buried in pure sepulchre."

Canons Edgar, 1 Wilk., 225, 232.

Johnson, A. D. 740, No. 96, and 963, No. 24.

1 Burns, Ecc. Law, 260.

After the Reformation in England, on the revision of the Canons of the Protestant Episcopal Church, in 1603, by the Hampton Court Conferences, the substance of the 68th canon became and is now known as the 68th canon of the latter church. The rubric, which is in the burial office in the English Book of Common Prayer, was not drawn up until 1661, and was deemed as explanatory of the ancient canon law and of the previous usage in England, and greatly modified and limited the class of persons to whom it applied in the canon law. Before the rubrics of 1661, the prohibition extended to all persons who had not received the holy sacra-

ment, at least at Easter, or such as were killed in duels, tilts or tournaments, or convicted of infamous crimes, but did not exclude unbaptized persons and suicides.

The Savoy Conference, in 1662, made the last revision of the Book of Common Prayer as it is now used by the Protestant Episcopal Church in England, and the rubrics as they were called (because printed in red ink) over many of the prayers, and in other parts of it informing the clergy as well as the laymen how and what to do on particular occasions. These were derived from the canons in most cases, and in some instances they conflicted with the canons, and in other cases did not go so far as the canons. When the law for the conformity of Christian worship was passed in 1662, compelling its use in the form it then was and that it should be used as stated in the rubrics, the English Courts held that in all cases of conflict between the rubrics and the canons that the rubrics should prevail and that the canons were only of force so far as the statutes and common law permitted them (Mastin v. Escott, 2 Curteis, 760).

As to how far the canon law is in force in England it has been stated by authority that the canons of 1603, as well as the acts of Parliament after the reformation, also constitute a portion of that law binding upon the clergy, but only binding upon the laity where admitted by long custom or express recognition of the tribunals of the common law (Lord Hardwicke in Middleton v. Croft, Strange Rep., 1056; see also Mastin v. Escott and Kemp v, Wickes, 3 Philli, 276).

The duty cast upon the clergyman by his office is prescribed by the sixty-eighth canon, which provides that no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard convenient, warning being given him thereof, in such manner and form as is prescribed in the Book of Common Prayer. And if he should refuse to do so, except the deceased were within the prohibited class specified in the rubric, he shall be suspended by the bishop of the diocese from his ministry by the space of three months.

As the rubric now stands there are only three classes of persons who are within the prohibition. It reads as follows: "Here it is to be noted that the office ensuing is not to be

used for any that die unbaptized, or excommunicated, or have laid violent hands upon themselves."

If a clergyman should disregard this rubric and perform the burial office over the prohibited classes, he would be liable to trial and discipline by an Ecclesiastical Court for disregarding the laws of the church. The result might be suspension for a definite period or the deprivation of his orders.

The committing of a crime would not render a person liable to be excommunicated even when Church and State were united. There were ecclesiastical crimes only which would render a person liable to be excommunicated, and mere state offences were not regarded as such by the church when they did not affect church matters. (See Selden's Table Talk.)

In the ecclesiastical law a *felo de se* is regarded the same as an excommunicated person

To the rigid rule of the church there was then, as there still is no exceptions, but the law made the coroner's inquest binding upon the church. The first grave-digger in Hamlet believed that if Ophelia had not been a gentle woman she would not have Christian burial. The second grave-digger promptly answers that she is, because the "crowner" (coronor) has set upon her and finds that she is to have Christian burial.

Shakespeare has thus accurately stated the laws of the Church and of the Statutes in England, at the time he wrote, and not the laws of Denmark, in Hamlet's time.

Hamlet, King of Denmark, lived about A.D. 700 and Christianity was not introduced in Denmark until about A.D. 827, by Harold. So the laws of the Christian Church of England were referred to, and not the laws of Denmark, at the time of Prince Hamlet.

A sample of how suicide was regarded in law and morals about the time of the Reformation in England appears by the argument of counsel in the case of Hales vs. Pettit, reported in Plowden, page 253; it was argued that:

"It is an offence against Nature, against God, against the King. (1.) Against Nature, because it is contrary to the rules of self-preservation, which is the principle of nature; for everything living does, by instinct of nature, defend itself from destruction, and then to destroy oneself is contrary to

nature and a thing most terrible. (2.) Against God, in that it is a breach of His commandment, 'Thou shalt not kill,' and to kill himself by which act he kills in presumption his own soul, is a greater offence than to kill another. (3.) Against the King, in that he has hereby lost one of his mystical members; also, he has offended the King in giving such an example to his subjects, and it belongs to the King, who has the government of the people to take care that no evil example be given them; and an evil example is an offence against him." Hales vs. Pettit, Mich. Term 4 and 5, Eliz. 1562 in C. P. Plowden, 253.

The reply to this argument is equally as ingenious and subtle. So much so Shakespeare, in Hamlet, Act 5, Scene 1, puts the same logic in the second grave-digger's remarks when the fair and unfortunate Ophelia's grave is to be made. He says:

1ST GRAVE.—Is she to be buried in christian burial that wilfully seeks her own salvation?

2D GRAVE.—I tell thee she is; therefore make her grave straight; the crowner hath set on her, and finds it christian burial.

1ST GRAVE.—How can that be, unless she drowned herself in her own defense?

2D GRAVE.—Why, 'tis found so.

1ST GRAVE.—It must be *se offendendo;* it cannot be else. For here lies the point: if I drown myself wittingly, it argues an act; and an act hath three branches; it is, to act, to do, to perform. Argal, she drowned herself wittingly.

2D GRAVE.—Nay, but hear you, goodman delver.

1ST GRAVE.—Give me leave. Here lies the water; good; here stands the man; good. If the man go to this water, and drown himself, it is, will he, nill he, he goes: mark you that: but, if the water come to him, and drown him, he drowns not himself. Argal, he that is not guilty of his own death, shortens not his own life.

2D GRAVE.—But is this law?

1ST GRAVE.—Ay, marry is't, crowner's 'quest law.

2D GRAVE.—Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out of christian burial.

1ST GRAVE.—Why, there thou say'st; and the more pity, that great folks should have countenance in this world to drown or hang themselves, more than their even Christian. Come, my spade."

The grave was to be made "straight," that is, it was to be made East and West, for Christian burial, but in cases of those who had not Christian burial the grave was North and South, as before stated.

It is evident that the burial is represented as taking place in Denmark, as the King and Queen and Courtiers were present, but still the burial was according to the laws of England and the Established Episcopal Church, and not the Roman Catholic burial rites, as they were not allowed to be used in any parish churchyard in England after the Reformation and the establishment of the Episcopal Church and the rites prescribed by the Book of Common Prayer. For several centuries following the Reformation in England the Established Church was allowed to go beyond the requirements of the Book of Common Prayer in some particulars, and retain some of the old customs, and in none more so than in the burial rites.

We have before seen that the canons of King Edgar prohibited, at the burial of suicides, the carrying of palms by the funeral cortege, as was then the usual custom, and also the singing of psalms at the burial, and the singing of masses for the soul of a suicide.

In Shakespeare's time it is probable that in England the carrying of palms was customary at funerals, and although the law of England prohibited masses for the soul in all cases, it allowed but did not require a requiem at the grave after burial, and also allowed prayers for the souls of the dead. In Hamlet it appears that although the burial was according to the law of England, yet the Church could and did abridge the usual rites in cases of suicides. The absence of palms and some other appearances in the funeral cortege of Ophelia is thus noted:

> "Here comes the King, the Queen, the Courtiers.
> Who is this they follow,
> And with such maimed rites, this do they betoken?
> The corpse they follow did with desperate hand,
> Foredo it's own life."

In the same act in Hamlet the parish priest is made to say that Ophelia, upon account of the manner of her death, should not have the full rites of Christian burial. He said:

"Her death was doubtful;
And but that great command oversways the order
She should in ground unsanctified have lodged,
Until the last Trump; for charitable prayers
Shards, flints and pebbles should be thrown upon her."

The "great command" referred to was the statute law of England when the coroner found she was insane, and therefore entitled to Christian burial.

The last line above quoted fully describes the burial of suicides in that part of England where the ancient custom prevailed of burying at the cross-roads with a stake driven through the body, to mark the spot, and passers-by throw flints and stones upon it.

But the strict letter of the law still allowed the parish priest to abridge the usual burial service in such cases. Ophelia had the extent of the bell and burial rites of the church, but the priest refused to have a requiem sung for her soul after the burial. When asked by Laertes in suprise if no more was to be done after the burial, he indignantly said:

"No more be done?
We should profane the service of the dead
To sing a requiem and such rest to her
As to peace-parted souls."

In the American Book of Common Prayer, the prohibition of the use of the burial office is that the forms are not to be used by any minister for any unbaptized adults, any who die excommunicated or who have laid violent hands upon themselves (in the English it extends to unbaptized infants).

The minister is subject to the same penalty as in England.

In the United States the canon law as amended is in full force without any express statutory interference.

No part of the property is vested in the crown before the self-murder is found by some inquisition. If the body can be found all such inquisitions must be by the coroner *super visuns corporis*, and an inquisition so taken could not formerly be traversable in the Court of King's Bench. If the body cannot be found the inquiry may be by a Justice of the Peace the

same as all other felonies, or in the Court of King's Bench, if it sits in the county where the act was committed, and such inquisitions are traversable by the executor, heir, etc.

Coroners' Juries generally carried their views so far as to decide that the very act of suicide is an evidence of insanity, and that therefore it worked no forfeiture to the crown. Bentham cites this as an example of the uselessness of official oaths.

About the time of the Commonwealth it was very seldom that a suicide was pronounced insane by a coroner's jury. It is reported that out of seventy-four cases only three were found insane.

In 1693 a law was enacted allowing the findings of a coroners's jury to be reviewed by the Court of King Bench by the writ of certierari and the inquisition may be quashed as insufficient.*

In the Catholic Church the confessional, undoubtedlv, always has had a powerful influence in preventing the violation of the laws and ordinances of the church. Suicide is yet much less frequent among members of the Catholic Church than it is among other church members. It is proportionately less among Jews, however.

It has been computed, from statistics returned in certain provinces of Austria and Germany, that in a population of 1,000,000 the proportion of suicides between the Jews and the mixed white races were as one to four.

It should be remembered that when the Roman Catholic Church was in its supremacy in England, which was for many centuries, every State officer must be a member of that Church, at least in many cases, not of lower rank than a priest of that church. This was continued by the Protestant Episcopal Church until a repeal of the Corporation and Test acts, as they were called, which required it.

In Scotland there is a forfeiture of personal property only.

On the principal that the ethical precepts of the English Ecclesiastical law are incorporated in the common law of the several United States, so far as the same is applicable, suicide

* In the year 1870, by statute 33 and 34, Viet., chap. 23, a verdict of suicide does not now work forfeiture of any estate or property.

and the attempt at suicide are to be viewed as common law offences with us, and hence are felonies.

The *usages* of the English law have never been carried out in this country against the body or estate of the unfortunate *felo de se* since Colonial times.

Forfeiture in cases of suicide are expressly abolished by statute in New York. (3 R. S., p. 988, sec. 32.)

In the United States the law does not make any distinction or difference in regard to the burial or disposition of the bodies of suicides and those whose death is caused by disease or accident.

In 1879, by chap. 33, § 38 of 42 and 43 Viet., for an attempt at suicide in the British army, an officer will be court-martiald and cashierd, and a private will be imprisoned.

AIDING AND ABETTING SUICIDE.

When self-killing ceases to be entirely voluntary; in other words, when it is executed under another's compulsion, then, at common law, that other is guilty of homicide, though the deceased himself struck the fatal blow

Under the New York Revised Statutes (2 R. S., 661, § 7) assisting another in committing self-murder is declared to be manslaughter in the first degree.

At common law, if a man encourages another to murder himself, and he is present abetting him while he does so, such a man is guilty of murder as *principal*. It is otherwise, however, at common law when the suicide is consummated in the *absence* of the adviser. In such cases, as the adviser is only an accessory *before* the fact, he cannot, according to the old technical rule of law, be convicted until after the conviction of the principal, who, being on this hypothesis dead, is out of the reach of legal process. This, however, has been in many of the States corrected by statute, and where it is not, the advising another to commit suicide, who afterwards does so, is indictable at common law as a misdemeanor.

A civil action for damages against a person aiding and abetting another in suicide will undoubtedly lie in favor of any party who is injured thereby.

Under the Anglo-Saxon laws a person present at the death of a man who was murdered or had committed suicide was regarded as *particeps criminis*, and as such was liable to a fine. Every man's life had its value called, a *were* or *capitis estimatio*. This had been varied at different periods, in the time of King Athelstan, in A.D. 926, a law was made to settle the *were* of every order of persons in the State. If the fines were not paid the punishment was death.

In some countries accessories to suicide are punishable, even though suicide itself is not a penal offense.

Among the German States, Brunswick, Thuringia, Baden, and Saxony alone punish those who are accessories to suicide. The penal code of France has no penalty against accessories in such cases. The penal code of India has a penalty.

The general principal of law, however, prevails in all civilized countries that when any act is declared and punished as a crime, aiding and abetting another in it is also punishable. This was so under the Roman civil law and the canon law as well as at common law.

The law against this crime is obsolete from disuse because it is never necessary to enforce it, the natural instincts of the human heart being sufficient to prevent the frequency of such crimes.

In misdemeanors there are no accessories, but all the guilty actors, whether present or absent at the commission of the offense are principals, and should be indicted, and are punishable as such. (People vs. Enim, 4, Denio 129.)

SUICIDE AND TESTIMENTARY CAPACITY.

In regard to wills made just before committing suicide the prevalent doctrine in England and in this country is that the act of self-destruction may not necessarily imply insanity so as to avoid the will; that if the will is a rational act rationally done, the sanity of the testator is established, and the character of the will and its consistency with the character of the testator is the sole evidence of rationality at the time of its execution.

We have before seen that by the Roman law the will of a suicide could be admitted to probate.

Under the English common law previous to the statute abolishing forfeiture the will of a *felo de se* is void, both as to the appointment of an executor and also with respect to any legacy or bequest of goods, for they are forfeited by the very act and manner of his death; but any devise of land made by him is good, as that is not subjected to any forfeiture. The will of a *felo de se* is of force against the testator and his representatives and all other persons whatsoever; so if the king or lord pardons the forfeiture the will is suffered to take effect.

SUICIDE AND LIFE INSURANCE.

It is an established principle of law that an insurance against the consequences of an illegal act is, like a contract to do an illegal act, a void contract as against public policy, and we have before seen that suicide is a crime at common law, therefore no insurance can be recovered in such cases, unless the party is proved to be insane at the time of the act, then the insurance is valid and can be recovered. In order to avoid a recovery in all cases of suicide, a clause has been inserted in many policies conditioned to make it void "if the assured shall die by his own hand or act," or words to that effect.

The first case that was decided on the question of suicide and its effect on a life insuranc policy containing such a clause was that of Breasted vs. The Farmers' Loan and Trust Company, in the Supreme Court of the State of New York (reported 4, Hill 74) in 1843. The policy contained a clause of forfeiture in case the insured died by his own hand. It was held in that case that the insanity of the iusured at the time of his death by suicide was no defence. This decision was sustained by the Court of Appeals when it came up ten years afterwards (reported in 8 N. Y. 303) by five judges against three. On this appeal the case of Borradaille vs. Hunter (44 Eng. C. L. Reps. 336, which was the first English case on a similar question and was decided in 1843), was cited and approved

In England it is the law at present, under this particular form of a policy, that in every case of suicide, whatever may have been the mental condition, if the policy containing the clause which makes it void "if the assured shall die by his own hand or act," or words to that effect, the policy becomes void in such case. (In Clift vs. Schwabe 54 Eng. C. L., p. 437.)

The principle of the decisions in the English cases is founded upon the right of contracting parties to make any exception they may agree upon at the time of the issuing of the policy, and that it must be strictly construed in favor of public policy.

In Germany and throughout Continental Europe (with the exception of France—in the latter the Courts have given conflicting decisions as to the construction of the conditions against suicide), the Courts coincide with the views expressed in the English decisions and hold the policy void in such cases. There have been many conflicting decisions in American Courts on this same question, but they have not, any of them, gone so far as the English cases. In the United States Supreme Court (Life Ins. Co. vs. Terry, 15 Wallace, 580), in a case where the policy contained a condition "If the said person whose life is hereby insured shall die by his own hand this policy shall be null and void," and the insured died from poison voluntarily administered by himself, the Court says:

"We hold the rule on the question before us to be this. If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of this act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character of the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

This case was explained by the N. Y. Court of Appeals in Van Zandt vs. Mutual Benefit Life Insurance Company (55 N. Y. 169).

The presumption of law is, in all cases, that death was caused by accident, as in drowning, poisoning, &c. or in the natural way when no cause of death can be discovered. (Mallory vs. Trav. Ins, Co., 47 N. Y., p. 54.)

The burden of proving that the insured died by his own hand is on the insurer. This proved, the burden is thrown on the representatives of the insured to show that he did not commit the act of self destruction, with the knowledge that it would, and the intent that it should, result in death.

(See proper charge to the jury stated fn Van Zandt vs. Mutual Benefit Ins. Co., 55 N. Y. 169.)

A person is in law presumed to be sane, and to know the consequences of his own acts, until the contrary appears.

When the question of suicide and insanity, in regards to life insurance claims, are left to a jury, they are almost always decided against the insurers, on the ground apparently, if no other can be found, that the act of suicide itself is evidence of insanity.*

The most important decision, and one in which the American doctrine at the present time is plainly laid down to its full extent, has very recently been decided by the Court of Appeals of Maryland (Knickerbocker Ins. Co. vs. Peters, 42, Md. 414).

In this case the policy contained the clause, which by its terms made it void, "if the assured shall die by his own hand or act.' The act of self-destruction was by hanging. The wife of the deceased sought to recover from the insurance company the amount of the policy. The company defended under said clause, which they claimed made the policy void. In deciding the case the court said it is now too well settled to admit of question that the clause is not to be construed as comprehending every possible case by which life is taken by

* Dr. Johnson was right when he said, in regard to suicides, "that they are often not universally disordered in their intellects, but one passion presses so upon them that they yield to it and commit suicide as a passionate man will stab another."

the person's own act. For instance, all the authorities concur in the view that an unintentional or accidental taking of life is not within the meaning or intention of the clause.

Thus, if, by inadvertence or accident a person shoots himself or take poison by mistake, or in a sudden frenzy or delusion tears a bandage from a wound and bleeds to death, in a literal sense of the term, he dies by his own act; yet all the decisions agree that a reasonable construction of the proviso according to the plain and obvious intention of the parties, would exclude such party from its operation, and the Court instructed the jury that the clause in question would not prevent a recovery if they found from the evidence that the deceased killed himself in a fit of insanity which overpowered his consciousness, reason and will, and acted from a mere blind and uncrontrollable impulse; and that after they are satisfied that he died by his own hand, it becomes the duty of the plaintiff, on her part, to offer proof sufficient to prevent the operation of the clause; and she does not comply with such exigency by proof merely that deceased was insane at times. She must prove that he was insane when the act was committed, and in the absence of such proof of his condition at the precise time when the act was committed, the jury must presume he was then sane, and they cannot draw an inference that he was insane from the fact that he destroyed his own life. These instructions, say the Judges, state the law more explicitly and more favorably for the insurer than is found in any of the American authorities to which they have referred, or to which their attention has been called on argument. The Court says, in effect, that when the act of self-destruction is done during insanity, it is death by accident. It is to be observed that this clause did not say "sane or insane."

Mr. Justice Hunt, of the United States Supreme Court, remarked, in deciding a case, that "insurance companies some times insist that individuals, largely insured upon their lives, who are embarrassed in their affairs, resort to self-destruction, being willing to end a wretched existence if they can thereby bestow comfort upon their families."

"The juror," adds justice Hunt, "would be likely to repu-

diate such a theory on the ground that nothing can compensate a man for loss of life."

It is a good ground of challenge to a juror, in such cases, if he believes that suicide is an evidence of insanity.

The question as to the effect of the religious sentiments of *felo de se* cannot be taken into consideration by the court or jury when considering the sanity or insanity of the deceased in life insurance cases. This has been directly held by the N. Y. Court of Appeals, in the case of Gibson vs. The Am. M. Life Ins. Co., 5 Transcript Appeals, p. 261.

In that case the question in contention at the trial was whether the death of the deceased was accidental or whether it was a case of intentional self-destruction. The defendant insisted that they had a right to show that the deceased was an infidel and an atheist, and thence to draw an argument in support of the theory of intentional suicide. In holding that such evidence could not be considered, the Court said :

"To adjudge that a man's belief in Christianity will prevent the commission of suicide, or that atheism will produce or tend to produce a contrary effect, is to adopt a principle more subtle and speculative, more uncertain and more remote than the law can recognize."

The *maxim Nemo praes nuntur*, &c. No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death. (6 Coke, 76), relates to dying declarations only, and not to suicides or presumptions in regard to the act.

Expert testimony is also very much restricted in this class of cases. A medical witness was called for the plaintiff and asked the question : "Assuming that a person had that form of insanity which you denominate melancholia, and had committed suicide, would you attribute that suicide to the disease ?" This question was objected to on the trial, and the witness answered, "Yes, I should attribute it as the result of insanity." The N. Y. Court of Appeals 8. (Van Zandt vs. Mutual Benefit Life Ins. Co., 55, N. Y., 179,) granted on this ground a new trial ; the verdict was in favor of the plaintiff.

The many insurance decisions on the subject of suicide already in the law reports, which show the controversy that exists among us with all the force of novelty, is caused by the different policies issued.

So long as insanity is allowed to avoid the terms of insurance in cases of suicide, it is apparent that no clause can be inserted in a policy which can effectually guard against it if the question is tried by a jury in the usual manner.

In our American Courts, in order to see that justice and right is done to insurers, the courts in some cases take the case away from the jury, if possible, and direct a verdict for the insurers (Fowler vs. Mutual Ins Co., 4 Lansing, 202).

(See McClure vs. Mutual Benefit Life Ins Co., 55, N. Y., p. 651. Weed vs. do. 70 N Y., 562.)

The policy in such a case should contain, in the clause against self-destruction, the further proviso "whether sane or insane," or words to that effect. Great caution must be used in this, or a new trial will be granted, for the reason that the case was a proper one for the jury alone to pass upon.

It has seemed doubtful what clause could be inserted in any American policy which could effectually guard against suicide. In a late case, however, in the United States Circuit Court, in the Northern District of Illinois (Chapman vs. The Republic Life Insurance Company, 5 Bigelow Ins. Cases, p. 110), the company defended against a suicide claim on the ground (among others) that its policy contained a condition thus worded: "In case the said insured die by his or her own act and intention, whether sane or insane, or of death in consequence of the violation of law, * * * then, and in such case, it is stipulated by all the parties in interest that the company shall not be liable for the sum assured." In point of fact, Chapman's death was caused by a pistol shot fired by himself, and the company disclaimed liability on the ground that the shot was fired "with the intention and for the purpose of then and there causing his death." The usual plea of irresponsibility on the ground of insanity was put in as an offset to the company's defense, and the company relied upon the condition of its policy above quoted. The Court said: "I have no doubt of the right of an insurance company to thus protect itself against liabilities;" and again, "as nothing is seen in this case, or has been suggested, making it incompetent for the defendant to protect itself against the insane act of persons holding its policy, we think effect must

be given to the condition, and the replication must be held to be bad."

Quite recently the Federal Court, sitting in St. Louis, declared that whether a suicide is insane or not, whatever, indeed, may be the circumstances of his killing, if he dies intentionally by his own hand, insurance on his life will be forfeited; the policy contained a stipulation of forfeiture in event of suicide. The Court held, in the same case, that on another policy there was no forfeiture because it was not so stipulated in the policy.

It was held (Pierce vs. Travelers' Life Ins. Co., 34 Wis. S. C., 3 Ins. L. J., 422), where a policy contained the conditional clause "or die by suicide, felonious or otherwise, sane or insane," &c, the policy should be null and void; that the parties to the contract having defined the sense in which the word "suicide" is to be used, the Court is bound by that definition, and the insurers are not liable without regard to the mental condition of the deceased.

The apparent conflict among the American adjudications on this point is chiefly caused by the peculiar wording and construction of the different provisos against self-destruction. The current of these decisions, when the policy is properly worded as construed by our Courts on this question is gradually approaching Dean vs. Am. Mutual, (4, Allen, Mass., p. 96), and will ultimately be in effect the same as the English decisions, for they are the most just to the insurers and are according to the common law, and are for the welfare of the community as tending to discourage and prevent self-destruction.

(Since this part of this paper was published the United States Supreme Court, in October, 1876, in the case of Bigelow, is Berkshire Life Ins. Co., 93, U. S. p, 284, has impliedly followed the case of Borradaile vs. Hunter, in the same direction, by construing a life policy containing the phrase "sane or insane" to have the same meaning and effect as the policy was held in that case to have without that language. The case also follows the case of Breasted vs. The Farmers' Loan and Trust Co., 4 Hill, p. 74, before cited.)

In viewing the decisions of our Courts, the express lan-

guage of the policy must always be considered. The restrictions and practices in regard to suicide clauses are, therefore, very important. In England the conditions as to suicide are different at various times and in different companies. Some of them issue policies free from any conditions on this point ; others declare that their policies shall be void in the event of death by suicide occurring within a certain period after the issue of the policy, such period varying from six months to five years. The wording of the suicide clause is also various—as, dying by his own hand, whether under the influence of insanity or not.

Most of the companies declare that suicide, whenever committed, shall not prejudice the assignee of a policy, but some of them add the condition that intimation of the assignment must have been made to them either before death or one month after death.

French companies also vary in their policies—some omitting any clause against suicide, and others containing restrictions in various terms and conditions.

In Germany, Austria and Switzerland a great variety of practices exist. Some companies, under their clause against suicide, pay the full amount assured if the policy has been a certain number of years in force, some pay only in the event of insanity being established as the cause of suicide, others only pay to third parties, some leave the settlement entirely in the hands of their boards, a very few companies preserve silence by omitting the clause or giving but vague directions on the subject. The Gotha Life Assurance Company, the leading company in Germany, formerly considered a policy null and void in all cases of suicide, even without any clause against it, and its action was sustained in the German law Courts. In 1840 an alteration was made in the by-laws of that company, by which it was provided that all claim upon the amount assured, beyond the reserve value of the policy, was lost if a person died by his own hand. It will be observed that no distinction under this regulation was made as to whether a person died under the influence of insanity or otherwise. The reserve value is always much less than the amount of the premiums which have been actually paid. I

believe that the Gotha originated this plan, which is now quite common in the policies recently issued by American companies.

The American companies exhibit as extensive varieties in regard to their practices as can well be imagined. They not only include all the European varieties of policies and clauses relating to suicide, but many more. The N. Y. Life Insurance Company, the fourth in rank in the United States in the number of outstanding policies, has no clause, and never had any, relating to suicide or self-destruction. Some companies now provide that if insanity is ascertained and pronounced by an authorized board or person specified by them, by request on the part of the insured, before the act of self-destruction is committed, then the policy will be paid ; some of these, even in such case, only pay the amount of the reserve of the policy, and others return the premiums.

About one year ago the Chamber of Life Insurance, composed of about thirty leading companies in the United States, recommended that a clause be inserted in the policies of all companies, to the effect that it would he null and void "if the person shall die by suicide or by his own hand, or in consequence of an attempt to commit suicide or to take his own life, provided, however, that if any of these acts be committed while in a state of derangement or insanity, the company agree to pay upon the policy thus voided the full legal reserve thereof."

The policy must be at least one year old to be entitled to this. This has generally been adopted, more or less, in effect by all companies (excepting the New York Life), relating to new policies. Many of them had used it for several years before, more or less. In some instances they return the actual amount of the premiums paid in such cases. The fifth company in rank does this. Some companies contain further restrictions, as to the length of time, &c. The practice of assignment of the policy or the payment to other persons interested in the life of the insured is the same as is in general use. In all other cases it must be on consent of the company.

The question of the legal assignment of a life insurance

policy is governed by the laws of the State where the assign ment is made. (Barry vs. Eg. L. A. So., 59 N.Y., 587.)

Of the outstanding life policies in the United States, and there are about eight hundred and eighty thousand of them, probably about one-twentieth do not contain any proviso against suicide; and about three-fifths contain only the simple proviso making it void if the insured shall "die by suicide," and about three-tenths contain the additional words of "sane or insane." The first and third companies in rank in the number of outstanding polices only added to that clause "sane or insane" about four years ago—the fifth had used it for many years. The second in rank contains only the simple proviso declaring it void in case of suicide. The fourth, as we have seen, does not contain any restrictions whatever on this point. These five companies have more than one-third of the total number of outstanding policies.

I have not found or heard of any policy, either in Europe or America, that contained the comprehensive suicide clause, and in addition thereto the words to the effect that said clause should "bind the heirs, executors, administrators and assigns, and all other persons interested in the insured." Such an addition to some of the suicide clauses which are in some policies (to wit: the case of Chapman vs. Republic Life Ins. Co., above cited) would undoubtedly greatly relieve the Courts of any necessity of ever submitting any question under it on this point to a jury, and thus the intention of the parties at the time of the making of the contract would be enforced in law without any uncertainty in the matter. There has never been any reported adjudication upon any policy containing such a clause as is above suggested. In some States these words would be implied.

Where a policy provides that if the party die by his own hands the policy should be void, except to the extent of any *bona fide* interest which a third person might have acquired, the English Courts hold that it may be enforced for the benefit of others, whatever be the means of which death is occasioned. (Moor vs. Woolsey, 25 Beaman, 599. The Solicitors' and Gen. Life Assur. Co. vs. Lamb, 2 De Gex. J. and S 251.

Where a policy was taken out for the benefit of the wife

and children of the insured, and it contained no clause forfeiting it in case his death by suicide, it was held by the N.Y. Court of Appeals (Fitch vs. Am. Pop. Life Ins. Co., 59 N. Y., 557), that evidence that deceased committed suicide was not admissable, and that the parties interested were not bound by the acts of the deceased unless in violation of some condition of the policy.

In regard to the enforcement of payment from foreign companies doing business abroad, the general rule of the law of the forum prevails, and the law of the place where the contract is to be performed is to be considered without regard to the laws under which the company is organized and located at home.

The *lex loci contractus* prevails to a certain extent. The policies generally provide that payment of loss must be by the "home office," and at the "home office." In such case the *lex loci* is at that place, although a suit is commenced in some other State it is governed by that of the home office.

To allow insurance for suicide, it is argued, seems unjust to all policy-holders, as it introduces another class of risks which cannot be guarded against, or only to a very limited extent; and hence all premiums are necessarily made much larger, and a loss in such cases also impairs the capital and surplus of the company. The patronage of the people, however, shows that it is liked by them. The degree of skill exercised in the medical examinations of applicants make the risks much less in such cases than is generally supposed.

The propriety of allowing any insurance on a life destroyed by suicide may well be questioned on the grounds of public policy. (1.) It is an illegal act, being a felony at common law, as we have before seen. (2.) It is an immoral act, and against the welfare of a State to allow any encouragement for the self-destruction and loss of its members which all are bound to preserve and protect. (3.) It is aiding and abetting suicide, which is also a crime at common law and by statute. The harm done by allowing it is in proportion to the absence of restrictions on that point in the policy, and also in the amount of the insurance.

The endowment plan has a contrary effect from the usual

life insurance plans, and it should be encouraged as having a beneficial tendency favorable to the longevity of individuals. The number of endowment policies outstanding in the United States is very small in comparison with life policies.

CONCLUSION.

Self-preservation is, unquestionably, the natural law, and is the strongest instinct of all animal life. If it were not more prevalent than the destructive agents without and within organic beings, they would all, sooner or later, become annihilated. Love of life, therefore, is and must be the natural selection and conservative for preservation; and death, and and the fear of it, is and must be naturally shunned for the same reason.

Man is the only being in all animal life, with one exception, that ever commits wilful and deliberate self-destruction. The scorpion will sometimes sting itself to death when its hope of life is gone. Byron has graphically described this in "The Giour," by the following lines:

> " * * * * like the scorpion girt by fire,
> In circle narrowing as it glows,
> The flames around their captive close,
> 'Till inly scorched by thousand throes,
> And maddening in her ire.
> One sad and sole relief she knows—
> The sting, she nourished for her foes,
> Whose venom never yet was vain,
> Gives but one pang and cures all pain
> And darts into her desperate brain."

There are and must be times when the natural instincts are overcome or lost, and then some other stronger and counteracting influences must be brought to bear to preserve or to restore them to power and healthy action.

It is, unquestionably, the duty of a State, and each member thereof, to use any and every means to protect and preserve its members from destructive agencies, from whatever sources they may come. Counteracting influences over predominant

tendencies which are or may be harmful to the community, is the object of all penal laws. The difficulty seems to be how this shall be done in this case. The punishment of suicides by a narrow view, seems that it may or can only affect the living, and not the guilty party,—that the innocent also must suffer. All penal laws relatively, affect the friends and family of those who may violate them, and many times this is found to be their most salutary use in deterring their violation.

We have seen in the foregoing history that there are attributes and peculiarities of the mind that may be used to effectively prevent this most terrible occurrence. Religious influence should be encouraged as a solace in moments of despair, and as having rewards and punishmeuts in a future life. Suffering humanity seems to require this in the day of temptations and of troubles, be they real or imaginary.

It may be said here that penalties ought not to be enforced against insane persons who commit suicide. It is a well recognized fact that the insane have like passions as those who are not insane, and are amenable to influences, and are restrained from doing wrong and constrained to do right, by the same motives, which have the same effects in sane persons, and that they generally have the power of self-control when they have a sufficient motive to exert it Their actions are controlled, like sane persons, by their hopes and fears, be they real or imaginary.

The disposition of the body and property of the deceased may be in a manner which will deter others from similar acts. Exemplary penalties are common and are always commendable in all penal laws. The bodies of executed criminals have in all nations and countries (except in the United States) from the earliest times to the present, been denied the usual burial rites which were peculiar to the times and country in which they were executed, and some special disposition of them were prescribed.

We all need protection from this dreadful foe, which may deprive us, at any time, of our most esteemed and nearest and

dearest friend, or our own hand may be raised against our own life ; and then there are those who would mourn for the most worthless of us.

However useless and burdensome the suicide himself may be regarded by the community, or by his relatives and friends, or by himself, his *example* should not be allowed, for some more worthy person may be tempted, in a moment of despondency and madness, to follow the unfortunate and cowardly course to escape the ills and ails of life, instead of "taking up arms against a sea of troubles," and bravely fighting the battles of life through any and every adversity, bearing all with fortitude—always hoping for the better in the sharp extremities of fortune By thus living heroically in the path of duty and right, he will, like a soldier on duty, die as he has lived, heroically ; and, at the last, he can exclaim, with St. Paul, "*I have fought a good fight!*" Such examples will have beneficial effects

VALEDICTORY ADDRESS

—BY—

CLARK BELL, ESQ.,

ON RETIRING FROM THE PRESIDENCY.

GENTLEMEN AND COLLEAGUES:

The time has come when it becomes my duty to retire from the Presidency of the Medico-Legal Society of New York, which I have occupied, through your kindness and partiality, for three terms.

Placed in this position, wholly unsolicited and unexpected at the outset, the duties of which I assumed with grave misgivings as to my ability to discharge properly, I have made it my earnest endeavor to fill worthily, and so far as lay in my power, to discharge its duties impartially.

Becoming greatly interested in the success and prosperity of the Society during these years, so eventful in its history, and anxious for a continued era of success in its labors, I can leave this chair with tranquility and satisfaction when I remember that the name of my successor is a sure guarantee for your future prosperity.

At the moment when I lay aside these responsible duties, it may not be unfitting that brief allusion should be made to some of the leading events which have distinguished your labors during this period.

GROWTH OF THE SOCIETY.

Finding but a few names from the legal profession upon your roll of members at the moment of my first election, I made such personal efforts as brought into the Society some

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(Pronounced Nov. 30, 1875.)

of the most distinguished members of the Bar of the City of New York, and made the two professions more nearly equal in numbers upon your roll.

Believing that the usefulness of this Society would be greatly enhanced by interesting prominent members of the medical profession, from among those especially who had devoted careful study to the subject of Medical Jurisprudence, I labored for an increase of membership from this class of the medical profession with such success that but few alienists of prominence or physicians of eminence in this branch can be found in the city whose names are not now upon your roll of membership.

From a small roll of names in 1872, we have swelled the list until we now number upwards of 425 members.

A marked change in another aspect can also be observed in this body. Its labors upon the various topics that have occupied your attention have embraced a far wider field, and attained a more complete and thorough publicity than before.

This has been due to causes which have been two-fold in their action :

1. The public press, animated by a laudable desire to diffuse the result of scientific research and inquiry, has with great kindness and favor noticed our proceedings with more care and fidelity than would be tolerated by merely medical societies; and medical men, united here with men of other professions in a society which is purely scientific and in no sense a medical society, have not been embarrassed in this respect by questions arising from publications, especially in the public press, which might otherwise have been regarded as objectionable from a purely professional and not a scientific standpoint.

2. The selection by the Society of an organ which has published its principal papers, and the republication of all its important contributions, not only for the benefit of members, but for the public libraries and kindred associations throughout the world, have ennobled and dignified the labors of the Society ; and these causes have been completely crowned by the successful publication of a bound volume of our principal

papers in the first of a series which cannot fail to be regarded by students of Medical Jurisprudence everywhere as a most valuable acquisition to the contemporaneous literature of our times upon these topics.

The first of these volumes has already appeared from the press of McDivitt, Campbell & Co , of No. 79 Nassau street, New York, during the year 1874. The second volume, now shortly to be issued, will bring the work of the Society down to the year 1874, and it will be ready for delivery, as our publisher announces, early in February next.

LIBRARY.

Immediately upon assuming the office of President of this body, I ventured to recommend, in my first inaugural address, the founding of a complete and comprehensive Library upon Medical Jurisprudence in this city, under the auspices of this Society, which should afford the student of either profession an opportunity of access to all the learning of the world upon questions now daily becoming more interesting and prominent.

These recommendations, having met with so cordial an endorsement from the Society, have encouraged me to continue the same from time to time, and with such results that we may now safely regard the Library as an assured success.

I have corresponded during the past year with many of the public libraries of Europe, and with a large number of the booksellers of the Old World, as well as our own country, to secure every accessible work in print, with favorable results.

I submit herewith an appeal, which, by direction of the Executive Committee, has been made to the generosity of both the professions of Law and Medicine, and which, through the kind courtesy of the public press, has been given a wide publicity.

I also append a list of contributions which have been made to the Library since my last announcement, both in cash and in volumes, with the names of the donors, and a statement of such purchases as I have made for each donor respectively.

I must not take leave of this subject, now that I am retiring from active participation in this particular field, without thanking the many gentlemen who have encouraged me in this labor by their countenance and donations, especially Mr. David Dudley Field, Mr. John H. Watson, Mr. Carlisle Norwood, Jr., for their generous gifts; Dr. Frederick Billings, of the Surgeon-General's Office, for his valuable exchanges and kind interest, and last, Mr. L. Del Monte, for the most valuable single gift yet made to the Library, being a complete set of "Annales d'Hygiène Publique et de Médicine Légale;" a gift which is of great value.

This gift from a gentleman of culture and taste, not a member of this Society, has deeply touched me, and entitles him to the thanks and good wishes of every member. I ought to say that it has been my earnest wish to create as deep an interest in the success of the Library in the members of the medical profession, as that which has been shown by the legal; and I am not without hope that my honored and talented successor will be more successful in that respect than it was possible for me to be. If this Society shall credit the retiring administration with the founding and establishment of such a library, I shall never regret my labors in this chair nor recur to them without honest pride.

As a means of awakening an interest in both professions in the Society, and of enlarging the sphere of its usefulness in new and comparatively untried fields of labor constantly opening before it, an Annual Dinner was inaugurated in the first year of my presidency, with such success and public recognition that it has been annually repeated, and I hope will remain a feature of the Society, to the success of which, so far as increase in numerical strength goes, it has notably contributed.

THE MEDICO-LEGAL SOCIETY OF FRANCE.

I had the honor, in my last inaugural address, to recommend the nams of Monsieur J. A. Guerard, late the President of the "Societé de Medicine Légale de France" for Honorary Membership in this body. The honor, though well deserved, came too late. M Guerard was no more, at the mo-

ment of our action, the mournful intelligence of which had not then reached us. The eloquent and touching oration pronounced before the Paris Society by that warm personal friend of the deceased, Monsieur T. Gallard, Secretary-General of that Society, brings to us a lively remembrance not only of what the French Society suffered in the loss of their President, but that which the science we are organized to investigate sustained throughout the world.

Volume 3 of the published transactions of the French Society, which we have received, illustrates the singular value of the labor of the French Society under M. Guerard's presidency during the year 1874, in a series of papers, discussions, and reports of cases of great interest, not the least important of which is the report by M. Dolbeau to the French Society upon the subject of "Chloroform as an Agent in the Commission of Crime," in which the whole subject is critically examined and reviewed. The views of our late President, my talented predecessor, Stephen Rogers, M. D., are critically analyzed, and a record made of a series of experiments of very great interest and value.

I commend this paper and the subject to your thoughtful attention, and recommend that it be made the subject of critical tests and experiment by a committee of this body.

The French Society called to the chair, made vacant by the death of M. Geurard, one of its most distinguished names, Monsieur Devergie, an Honorary Member of this Society, an author of distinguished renown in Forensic Medicine, and a former President of that Society.

An event of great moment to the French Society, contemporaneous with his inauguration, was the installation of the Society in the Palace of Justice in Paris, where it will henceforth hold its sessions.

We can but take a lively interest and feel sincere pleasure at these signal marks of the increasing usefulness and power of our sister Society of Paris.

The French Government has placed a high estimate upon the usefulness, importance and value of the science of Medical Jurisprudence by its action in decreeing that Society necessary for the public safety and welfare of France, which

the French tribunals have wisely followed in providing for its sessions in the Halls of Justice.

RECOMMENDATIONS.

The advance and progress made by this Society make certain changes in its organic law necessary, which could not have been contemplated by the earlier framers of its code, before the Society had attained that growth and importance which has characterized its later labors.

While the Society is open to men of science in all the professions, it is necessarily composed, or is now likely to be, mainly of the two professions of Law and Medicine.

The main labors of the Society, aside from its public discussions and contributions from members, fall, and very properly, upon the Executive Committee, in whom nearly all power is vested.

The usefulness, the prosperity and permanency of the Society therefore depends upon the selection of men of acknowledged and recognized position in their respective professions, as members of the Executive or Governing Committee.

From the medical side, those should be selected who have made Medical Jurisprudence a specialty, and who are recognized authorities and experts in matters of Medical Jurisprudence, and the same rule should obtain, though perhaps not so strictly, in the other professions.

The Paris Society have made this the distinguishing feature and characteristic of their body, and to this is greatly due their wonderful success.

Again, in selecting members of the Executive or Governing Committee, the prosperity and usefulness of the Society depends in a large measure, in my judgment, upon selecting, as near as may be, an equal number of the officers from each of the professions of Law and Medicine. I recommend, therefore, such a change in the Constitution or By-Laws as will provide that at least five of the fifteen members of the Executive Committee annually elected shall be selected from each of the two professions of Medicine and Law. I also recommend, for the purpose of more effectually securing this re-

sult, that each be balloted for separately at the annual election.

I may say that the most important, the most distinctive feature of the French Society, is its

PERMANENT COMMMISSION.

It is composed of the President, the Secretary-General, and of nine members, chosen especially for their scientific attainments and superior knowledge as experts in matters of Medical Jurisprudence, from either profession.

These members are elected three each year, are selected with great care from the most eminent names in France in this regard, and they hold their office for three years each.

A majority of this Commission decides a question, and four voices are necessary to a quorum.

This permanent Commission is charged with the solution of any question that may come to the body from the Courts or other sources during the interim between the sessions of the Society, and its action is subordinate to and always under the review of the Society itself.

Its especial value is that it is composed of men of such character and standing, that its decision upon an obscure question of Medical Jurisprudence is of the highest value, and is usually conclusive. To this Commission questions arising in the courts, in the administration of the criminal law, and various other questions, are constantly referred, and its usefulness and practical value cannot well be overestimated.

M. Devergie, on the occasion of his last assuming the chair of the French Society, in speaking of the labors of this Commission and its results, says:

"We make an appeal, or rather we make an entirely disinterested offer to magistrates, to advocates, to medical experts, surgeons and chemists, and we say to them, if any difficulty presents itself to you in the discharge of your duties, if the solution of any question embarrasses you, or if you feel any doubts upon your mind, come to us, and with a very little delay you will receive the response from a body of men accustomed to interpret such cases, and deduce their conse-

quences." He continues: "This appeal, gentlemen, has been largely heard in all parts of France. Tribunals, magistrates, advocates or physicians have for six years submitted to us their most difficult questions, and in the generality of case the Society has had the good fortune to see its advice taken in the decisions and judgments which have been rendered."

This is a remarkable statement, and is the testimony of the ablest Medico-Legal jurist of France as to the practical value of such a properly organized "Permanent Commission."

I venture to recommend this subject to your careful consideration, and should regard it as a great advance if such a Commission could be established by this Society, provided such safeguards could be thrown around the selection of its members as would insure the selection of men of the highest scientific attainments in Medical Jurisprudence. Without that it would prove an injury rather than a benefit to the progress of scientific research and truth, which should underlie all your investigations.

OBJECTS AND AIMS.

The Medico-Legal Society is and should be studiously regarded and kept as a purely scientific body. Composed as it must necessarily be of men of various professions, united for the common purpose of careful scientific research upon abstract scientific questions, it cannot be called or regarded in any sense as a Law or Legal Society.

It is not in any sense, and should never become a Medical Society.

As the Paris Society opened its doors to men of distinction and eminence in Philosophy, in Chemistry, in Pharmacy; to Naturalists, Physicists, Scientists, and even Veterinary Surgeons, so have we opened ours, not quite so wide perhaps as our Paris *confreres*, who admit pharmacists and veterinary surgeons, but we do admit chemists and scientists, and men of eminence in letters, which must be wide enough to take all the brain and capacity that can aid us in the careful and scientific search after truth.

Danger would threaten the integrity of this body if any ill-advised or thoughtless person should attempt to enforce it, or engraft upon it, on the one hand, any of the usages or ethics peculiar to strictly medical societies, which only medical gentlemen can explain, much less, justify; or on the other, any questions or ethics peculiar to lawyers, as such.

We escape all these vexed and confusing questions, and our permanency and safety lies in standing squarely on the broad platform of a strictly scientific Society, allowing each profession to govern itself, outside our Society, in its own way and manner.

I shall leave to my honored successor the discussion upon the advancement which is being made in the various fields of scientific research and inquiry, and shall pass without comment the various topics upon which I have freely spoken to you on other occasions.

Your interest in these important regards could not be placed in abler or safer hands, and he will bring to the discharge of the duties of this chair a ripe experience, which cannot fail to add lustre to your Society under his skilful direction.

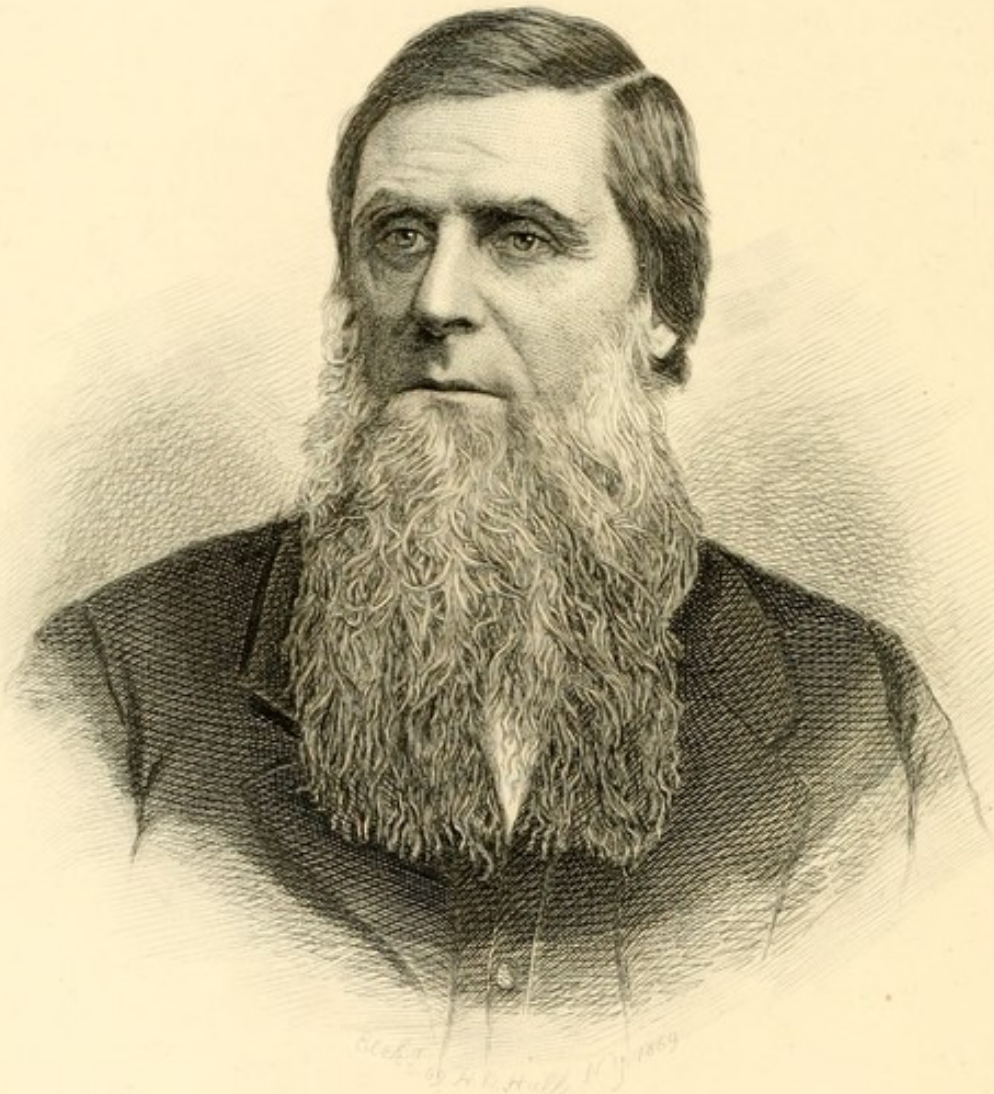
In conclusion, let me thank you, one and all, for that kind and cordial support which has been constantly extended to me upon this floor, and in all the varied duties of this chair, and which I shall never forget.

It is not unlikely that in so extended a term of service I may have given offence or have made mistakes. If so, I know of no more fitting occasion than the present to express my regret, and to assure all that it has not been intentional, and to request that it should be overlooked and forgotten.

And now, permit me to congratulate you, gentlemen, and the Medico-Legal Society of New York, upon that peculiar good fortune which enabled you to secure as your President, for the ensuing year, Prof. Frank H. Hamilton, who has won his way by an industry equaled only by his ability, into the very front rank of his profession, whose name is authority upon his specialty wherever the English language is spoken, whose writings have met the critical approval of the students and savans of modern scientific research in all countries, and

whose successes in his professional life are not greater than the talent he has shown in the chair of the professorship of his choice.

It was meet and proper that such a man should be chosen as the President of this Society; and it is a source of the highest pleasure and personal gratification to myself that you have so generously seconded my own wishes in transferring he honors of this distinguished position into such worthy and capable hands.



Charles P. Daly LL.D.

Chief Judge of the New York Common Pleas.
President of the American Geographical Society &c.

Charles P. Daly, L.L.D.

Ex-Chief Justice Daly was born October 31, 1816, in New York City. His parents were emigrants from the North of Ireland. He was admitted to the bar in 1839. He was elected to the State Legislature in 1843, and was appointed Judge of the Court of Common Pleas by Governor Bouck, in 1844, to succeed Judge Inglis.

His judicial career commenced May 1, 1844. He was re-elected continuously until his retirement from the bench, having reached the Constitutional age limit, making a record of over forty-one years of service, during which he was Chief Justice since 1858. Columbia College conferred the degree of L.L.D. upon him in 1860. In 1867 he was elected a member of the Convention to revise the Constitution of the State.

Judge Daly has acquired national and cosmopolitan reputation by his presidency of the Geographical Society, which honorable position he has filled for the past twenty-three years. He is an Honorary member of the National Geographical Societies of England, Germany and Russia.

He has always been an interested student of medical jurisprudence, and identified with the Medico-Legal Society at an early day. He was Vice-President of that Society in 1873, and on his retirement from his long service on the Bench was unanimously recommended for re-election as an honorary member of that Society, a position which he now holds.

Aside from his valuable papers on geographical discussions, which entitle him to high praise, he has been a writer on judicial questions, and his opinions fill many volumes of our Common Pleas reports.

The New York *Times* says editorially of Judge Daly, on the occasion of his retiring from the Bench:

"Judge Daly is, in the highest and best sense of the much-abused term, a self-made man. His decisions have not only been good law, but they have

been well-expressed law. The scholar in him has come to the aid of the lawyer in making clear what otherwise might have been obscure."

Judge Daly has ever maintained the confidence and respect of all classes of citizens in this city, and his life and career is one of the best examples of that success which, in America, comes to the young man from patient endeavor and conscientious right action. Without a collegiate education, he has taken high rank as a jurist and held first place in this city as a citizen, scientist and gentleman. C. B.

EPILEPSY WITH MANIA.

(CASE OF JOSEPH WALTZ.)

By A. O. KELLOGG, M. D., of Poughkeepsie, N. Y.

On the evening of May 1st, 1873, Joseph Waltz, then aged 22 years, killed Harmon Holcher, an Albany scissors-grinder, who at that time was a guest at his father's house. The murder was committed at night, and the body and the property of the murdered man having been disposed of secretly, the tracks of the murderer being thus covered. Nothing was known of the crime until a Mr. Kelch, son-in law of the victim, becoming alarmed, and suspicious at Holcher's non-appearance, set out to search for the missing man. He easily traced him to the village of Catskill, and from there to the house of one Anselm Waltz, a farmer, who lived three miles out on the road between Catskill and Athens. On inquiry, he learned that it was here that the old man had stopped for a night's lodging, and that in the morning following it was discovered by the inmates that their lodger had mysteriously disappeared, leaving his bell in the room where he had slept, and taking with him the pillow and blankets of the bed he had occupied.

Mr. Holcher was known by his friends to be always regular and temperate in his habits, and though accustomed to go often on trips similar to this, he would almost invariably return at the time he had specified, and thus it was that his

Read before the Medico-Legal Society, Dec. 23, 1875.

prolonged absence caused so soon uneasiness and alarm amongst his relatives. Mr. Holcher, his wife, and Michael Kelch, his son-in-law, set out early to learn the fate of the wanderer. After going to Hudson, Poughkeepsie, and Rondout, they went to Catskill, where, as before stated, they were informed that he was last seen going to the Waltz farm-house. They accordingly went there, and made inquiries of the father and son Anselm and Joseph Waltz, whom they found at work in the fields. At first they denied that Holcher had passed a night, that spring, with them ; but finally recollected that he was the man who had left so sudden during the night, taking with him the pillow and blankets. The strangeness of the whole occurrence, and the afterward somewhat singular behavior of the son aroused suspicions, and both he and his father were arrested the next day. After the arrest the grounds were searched, but nothing was found excepting pieces of the machine and a few small pieces of blood-stained clothing. Though these increased the excitement and confirmed, to a certain extent, apparently, the suspicions, the search for the body was abandoned after the lapse of a week. Just after this, some tools of the missing man were found on the side of the road near Coxsackie, and on a telegraph pole near by, was pinned an extraordinary letter, half printed, half written, but evidently in the handwriting of Joseph Waltz. This letter was addressed to Masons, Constables and Detectives ; and purported to be a confession of this and many other murders, and so-forth, by six banditti, or "Practical Highway Robbers." After the discovery of the letter, Joseph Waltz made a full and voluntary confession of the crime, and even went with the officers to the farm to point out the exact place where he had buried the body. The body and the missing blanket were found at the place indicated. The result of the trial, subsequent to the coroner's inquest, was his conviction of murder in the first degree, and sentence to be hung. The execution was ordered for the first of May, 1874, the first anniversary of his terrible crime. On the afternoon of the 29th of April, while in prison, he committed his second murder, killing his keeper, Charles Ernst. He was hung on the day appointed, May 1st.

The interest of the case lies in the apparent difficulty of determining exactly what the mental condition of the man was. The plea brought by the defense was insanity, and many were convinced of its justness. So difficult was the solution of this question, however, that to this day it may be considered as really unsettled, for not only did the district physicians disagree, but also the experts, of whom I happened to be one, giving an opinion to the District Attorney, who called us here, that Waltz was insane.

To lay before the Medical and Legal professions, the testimony bearing on the mental condition of Waltz, without prejudice or bias, is the object of this analysis, and the reader must judge for himself of the legal responsibility of the man, and the justice or injustice of the sentence.

The Medical Jurist will also be able to draw a contrast between the hurried manner and want of care with which this case was analyzed and disposed of, and there investigated and reported upon in German Courts, by Dr. Linan.

The trial took place in March, 1874, before Judge Westbrook, at Catskill, and over seventy witnesses were examined.

The following, bearing chiefly on his psychological condition, is condensed from the notes of the testimony kept by the Hon. J. A. Griswold, and the Hon. A. M. Osborne; the former the leading attorney for the prosecution, the latter, now on the Bench of the Supreme Court, for the defense.

The father and mother were Germans, and are represented as being ignorant people; the former was a farmer, and a man of ordinary intelligence; the latter was a woman of a nervous and excitable temperament, very talkative, and often difficult to manage. She appears to have been one of those persons whose condition seems to constantly border on insanity.

These facts are perhaps interesting, as throwing some light upon the hereditary psychological tendencies of the son.

There is nothing particularly interesting in Joseph's childhood, though even when a schoolboy he is represented as being peculiar. He never joined his schoolmates at their sports, and he shunned all society. The habit clung to him as he grew up. He took to himself no companion or encour-

aged intimacies. To his neighbors and friends he always appeared as an industrious, honest and moral young man, he neither smoked, drank, nor swore. When he was old and strong enough, his father put him to work on the farm.

Beside the little singularities mentioned, nothing was noticed till within three or four years of the murder. As he approached manhood, a change took place in him, and symptoms, evidently of an epileptiform nature developed themselves. He complained frequently of headache; at times he was unnaturally depressed and gloomy; he had strange fancies, and passed many sleepless nights; would sometimes neglect his work, and his conduct was so strange that it became necessary, often, to watch him. He would refuse food, at times, for forty-eight hours in succession, and often was in such a stupid condition that no answer could be got from him, no matter how important the question, or how importunate the questioner.

A wild and vacant expression of the eye was frequently noticed by his family and many others with whom he came in contact, and also a peculiar drawing of the nose. Occasionally he was unable to transact business properly,—and when he went to town to sell berries—part of his vocation—it was necessary, often, for somebody to go with him, to prevent his making mistakes. He was also very careless in his driving; would let the reins hang loosely, drive fast, keep his head down, and seldom turn out of the road for passing teams.

He had been in the habit of sitting up until twelve o'clock at night, reading. He read the Agricultural Journals, and similar literature, but never any sensational novels. One of his peculiar notions, that he carried into execution, was to build a tower from which he could "speak pieces," could study alone, and see people without their being able to see him. He worked at this tower perseveringly for four years, during his spare hours, and indeed a good part of the time when he should have been engaged in his farm duties, was spent in this manner. This tower was built of stones he collected from the farm walls and about the premises, and it contained a door and four or five windows. About the time

he commenced work on it, the first observed epileptic convulsion occurred. Father and son were working in a ditch, when the father noticed him suddenly fall, with his face to the ground, unconscious; there he lay for some time, his hands shaking. He "screamed out once." His father carried him to the house, and after placing him on a bed, attempted to open his mouth to administer "restoratives," but was unable to do so. He then commenced rubbing him, and in the course of two or three hours he "came to." He lay on the ground about ten minutes, his muscles "were stiff," and his eyes were "glassy and fixed."

While in bed he had "spasms." Though he recovered consciousness, he kept his bed till next day. When he got up, he "complained of soreness," and did not work any for two or three days. At another time, his sister says she saw him back of the barn, "all in a tremble," "his eyes glassy and fixed;" she asked him if he "could not help it," but she received no answer; she then went to the house for her father, and by the time they came back, "Joe" was gone, and they did not see him again that day. The father testifies that, about a year after the occurrence of the fit first mentioned, he was "taken sick" again in a similar manner; this time they were hoeing potatoes in a lot; he "fell on the ground," "he clinched the gravel," "rolled around on the ground," and was "rigid." The father says he noticed the same thing again in "strawberry time," when they were weeding strawberries, he commenced "pulling up plants and weeds together, shook, eyes were glassy, was rigid, and so-forth." During the three or four years preceding the murder, if Joseph was not insane, his behavior certainly, at times, was uncontrollable and extraordinary, and he is represented as having both hallucinations and illusions.

A strange hallucination, as testified to by his father and sister, was observed in the summer of 1872. This was connected with a couple of dresses which the sister was in the habit of wearing when she rode out. About these he maintained there was an odor that was offensive to him, and he always objected to her wearing them on that account. On one occasion, when they were dining, he jumped and ex-

claimed: "Your dress stinks!" And he obstinately maintained the idea in spite of the remonstrances of the rest of the family. These dresses were of linen, and there was nothing unclean or unusual about them perceptible to others.

The first change in his conduct noticed by others than his family, was in the summer of 1872. A neighbor who had known the family for years, and knew Joseph when he was a schoolboy, testified that about this time he saw a change in his general conduct.

About the first of August, Joseph went to his house to buy pigs. He took a couple, for which he agreed to pay $10.00. When he and his sister called for them two or three days afterwards, he offered as payment only $5.00, saying that they had been sold to him at twenty shillings apiece. When remonstrated with, he said, "Why, that is the price we sell you pigs." He seemed to forget that the pigs he referred to were only six weeks old, whereas those he had bought were three months. He then said he would take the pigs home, and hear what his father would have to say. This he did, and though his father concluded not to keep them, there was no ill will in any way engendered between the families. But for a month afterward, when they met on the road, Joseph would hang his head down and pass along without any recognition, whereas formerly he was always in the habit of speaking. After that, at times, he would speak pleasantly, as usual, and at other times would pass by and pay no attention to their salutation. He acted "queerly" in this way about once in three or four weeks, being at these times apparently in a reverie or "brown study." Although their conversations were not often in any way unusual, yet at times Joseph's was said to be disconnected and disjointed. During the succeeding fall and winter he was noticed, on two or three occasions, when walking alone, to stop suddenly, look upwards, and "make gestures towards the heavens."

This, as all the testimony, is important, as bearing upon that periodicity that characterized his attacks, and which was observed from the beginning to the end.

In the fall of 1871, he cut down about forty bearing Isabella grapevines. These vines, according to his father's testimony,

were of a "good kind;" had been set out seven or eight years and were worth about $1.00 apiece. He did this without orders, and when asked by his sister, who was watching him, what he was doing, he answered her, "nothing."

The next fall he repeated the same performance. He went out this time by moonlight, and cut down and killed with a pair of shears, a lot of choice, "good-bearing," "Concord vines," six rows in all, with about fifty plants in a row. These had been set out about six years, and were valued $2.00 each. When called to task the next morning by his father, who then for the first time discovered the destruction of the previous night, he was unable to give any satisfactory reason for his conduct.

A neighbor testifies that, in the fall of 1872 and the spring of 1873, he noticed that Joseph had removed several vines, and on questioning him, was told that, the first lot were old, and that the grapes were poor, and that he was intending to plant something that would pay better, and that the second he took out because the ground was rocky, and they did not do well.

During these years he had "spells," in which he acted strangely. Between these he would work well, and his conduct be natural, would converse with his family, tell them about what he had, and so-forth, but when these "spells" came on, which they did about once in three weeks, he would become uncommunicative, and often refused food, sometimes he would do his work in a different manner from ordinary people. For instance, on one occasion when he was planting current bushes, instead of carrying thirty or more of the little plants at a time, under his arm, he went to the back of the lot where they were to be planted, dug a hole, and then went and got one current plant and set it out. This he did several times, giving himself a large amount of additional and unnecessary labor. When spoken to about it by his sister, who had been watching him for about an hour, he told her to go into the house.

He had some strange and startling hallucinations and illusions in the autumn of 1872. One evening he went out of doors and commenced shooting rapidly. In about half an

hour his sister went out and inquired what the matter was, and, "why he was shooting so." He told her, because he saw people moving around among the grapevines.

The grapes were ripening at this time. He declared that people were after him and the grapes, and that he was firing at them. The father then came out, and the three thoroughly explored the place. Once, Joseph suddenly stopped and said: "*See, there they go!*" They tried to assure him no one was there; but he would persist that he "saw" them. Of course no one was there. Presently they arrived at the S. E. end of the vineyard, where were two bushes. These he pointed at, saying, they were "two men." They could not entreat him to return with them to the house. He remained out till midnight, some three hours, firing excitedly all the time. Though this is the longest, it is not the only time, for during the preceding year, he would occasionally go into the vineyard and shoot, and on being questioned about it on the morning following, would reply that "some one had been there." This firing was heard on the different occasions by their neighbors. They complained about it at the time, and testified to the fact of their hearing it, at the time of trial. The testimony given on behalf of the people consisted chiefly in trying to prove, up to the time of the murder, nothing was noticed that would lead to the opinion that he was insane, but as this was given by persons with whom his relations were only of a business nature, he having no intimate friends or companions, and it being negative in character, it must therefore be only taken for what it is worth.

Although always bearing a most exemplary character, among his neighbors, he had, according to his own confession, for the three months prior to the commission of his crime, at various times had been engaged in robbing school-houses. His object in doing this certainly could not have been for gain. He must have been under the influence of some strange impulse other than that which prompts the ordinary midnight thief and burglar. The first school-house he entered was that at Hamburg, this was in the middle of February, 1873; two weeks afterwards he robbed it again.

The Clough school-house he either intentionally or acci-

dentally set on fire. The Jefferson school-house was robbed March 12th, and the school-house at Leeds, April 15th, 1873. In the latter he left a letter addressed to "Mr. Pedagogue," in which he says the robbery was committed by a "band of outlaws from British Columbia," who were then going west, to Cairo; that they intended to use the books stolen in re forming the half-civilized Indians of British Columbia; and that they were under the influence of "Belial." The general style of the letter was similar to that found at Coxsackie. To plunder these buildings he was compelled to give up his night's rest, march through snow, water and mud, and hide what he had stolen, before morning, to prevent his parents from discovering his wrong doings.

These books were mostly school-books, readers, etc., for which he could have no use. The account which he gives himself in his "confession" is probably the only truthful and accurate one.

In the repert of the Commissioners appointed by Gov. Dix, to investigate the man's condition, and upon which the Governor refused to grant a reprieve or commute his sentence, we find these statements: "His father states that his health has always been good, and that *nothing unusual has ever been noticed in his conduct;* that he was a good worker, spending his time at home; a great reader, and attentive to all business, being particularly well informed in the culture of grapes and similar small fruits." And again, "We were informed by his father that up to the time of Joseph's arrest he noticed no change in him."

These are the only references made by the Commissioners to Waltz's condition prior to the arrest. And the reader must reconcile these statements of the commissioners with the testimony given above by the father and sister of Waltz. and the following comments on the same by Judge Westbrook in his charges to the Jury, as best he may.

"Let us glance, in the first place, at some of the prominent facts proven upon the part of the prisoner. It is said that some three or four years ago that the life and habits of this young man changed. They say that up to that time he had been a man of most exemplary conduct and deportment

remarkably so for one in his position of life, when suddenly he changed his characteristics, and that his reason no longer controls his actions and governs his conduct; and to prove this proposition they have adduced quite a mass of evidence. First and prominent, of course, is the evidence given by his father and sister, who had a better opportunity of knowing what this young man had been previous to the commission of this act, and who have a better knowledge of his nature. They say that some years ago his conduct did change; he became at some time, sulky, sullen and morose; at times he would answer no questions; at times he would refuse food; he commenced about that time, they say, to build a tower, from the top of which he was to speak his speeches to the world, and in which he was to study and write. They say also, that about that time he had three epileptic fits, thus showing that the physical system had in some way become impaired, and as a natural consequence the mental powers had become enfeebled and weakened. They speak of an occasion when at night he went out among the vines shooting, claiming that he saw some persons among the vines, whilst both the father and sister say that though they carefully searched through the vines they could hear or see no one, and they left him shooting, and he continued to do that for the space of about three hours, he having shot for about half an hour before they went out. I have not undertaken to enumerate all that they have said, though I may mention one other fact. They say his mind became so impaired and confused that he could no longer make change accurately, and the sister was sent with him. That in driving he became abstracted and moody, that the lines hung down in the wagon, and that he paid no attention to the horse's direction."

At the time when Michael Kelch and Mrs. Holcher called to inquire after the murdered relative, Joseph was kneeling on the ground at work in a strawberry patch. He did not move when they approached, but kept in the same position, occasionally looking sideways at Mrs. Holcher. When told to get the bell by his father he started off, but did not return that afternoon. Between the murder and the time of his arrest, he was often low-spirited, much dejected, and was seen by

the neighbors to go about with his head down. When he was arrested on the farm, and told to put the handcuffs on, he said, in reply to the accusation of having murdered the man, "You can't mean what you say; all the neighbors know we are poor, industrious people, working on our little farm." On the way down to the village he told his custodians that his parents retired first on the night that Holcher had stayed there; that then the scissors-grinder went to bed, and then, retiring himself. That being much fatigued, he immediately went to sleep, but was wakened sometime in the night by the sound as if some one was vomiting. At first he thought he would get up, but as the noise ceased, he fell asleep again, and the next morning when his mother went into the room to call the scissors-grinder, he was gone. When he was told that "it was a hard case; that the man had surely been *murdered*, there, and that unless he could prove himself clear, he would be held responsible for the crime, he rode on in silence for about half a mile, and then sighed, and said: "This would make me feel very curious if I did not know I was perfectly innocent; but I know that it will all come out right in the end." At the Justice's office, where the *warrant* was served for his arrest, he said he was "not guilty"; but he appeared quiet and was not in any way excited, nor did he manifest any indications of concern on his part of these proceedings.

During his first few days in jail he seemed "stolid, dazed, and apparently—indifferent. These days were occupied by parties in searching the farm for evidences of his guilt. The result of this search was the finding of pieces of the machine, some small pieces of blood-stained clothing, the lounge upon which the man had slept, and upon which were large stains of blood; they also found in the field, near the well, a lot of blood-stained stones—where, evidently, the body had lain, and traces of the fire where the machine was burned.

There was discovered, at this time, between two telegraph poles, near Coxsackie, a hammer, vise, oil stones, etc., and on one of the poles, about four feet from the ground, and fastened by four tacks, was the following letter:

Messrs. Constable and Detectives:

GENTLEMEN: We must affirm positively that you are utterly unfit for the office you are holding. As we have been among the unsuspecting people between this place and New Baltimore for nearly a week, and have performed various diabolical deeds and inscrutable tricks; we wish to let you know that one of our bandits came near knocking one of you over the other day. We intended to leave this country and proceed westward; but near the village of Hunter we came across an expert bank robber, of Europe, who claims to have discovered and planned a most ingenious and efficacious way of entering banks and opening safes, &c. He says that his mode of carrying on the banking business in the United States, especially in the Eastern or New England States, will be such as no human being in the ancient or modern times ever brought into effect. A bank, for instance, is not entered at night, as is usually the case, nor is it forced open with iron bars or sledge-hammers, neither by aid of any explosive powders, but it is entered by "superhuman" skill as he says, in broad daylight.

Further information on this subject you will receive in about four months by telegraph from Boston or Charlestown, Mass., for by that time, he says he shall be prepared to execute and prove to you all (the whole body of people) for the first time this extraordinary, most wonderful, exciting, and demoniacle operation! This distinguished biped is a native of Paris, France, the most notorious "jack" on this planet, he is going back to Europe for various instruments, of which you know nothing, and cannot be obtained in this country; such articles as masks, shackles, handcuffs, wigs, and many other things, all of which are difficult to be had and under great risk. This dexterous villain immediately consented to join our infernal band of burglars and cutthroats, and as soon as he returns from the island of Corsica we shall embark with him in his new enterprise. The wit and pluck of this adroit cynic is indeed beyond our comprehension. He would not allow us to mention his name, and would not have us practice any more of the petty robberies, but that we should do a more profitable business, such as midnight assassination.

One of our gang, Isaac H. Van Ness, performed an excution near Freehold, in this county, by braining an individual & Robbing him of over Two hundred & Thirty seven Dollars in money and a valuable Gold watch! Another young fellow about half way between [over] Albany & Coeymans was assaulted by us on the 26th of Apr.

He was travelling about begging from house to house such cents and dollars as were considered little acts of charity by the donors; poor, as he appeared to be, he had $500 in his possession. One night as we wished to take a little nap under a shed we found an old straggler occupied (as we thought stealing horses), we immediately dispatched him with our pocket rifles, fired by riflers. We afterward found that he was some sour-krout Dutchman and razorgrinder. We broke the old concern he carries about to atoms.

There is no man on earth to discover us or our victims or to reveal this mystery, you are all aware of the fact that "infernal" power is increasing on earth. Should you attempt to search for us we will have you scalped before you know it.

Good night Mr. Detective.

Practical Highway Robbers.

G. E. Clinton, Commander.
R. B. Hamilton, Spy.
— — ————, Bank Robber.
— Taylor, Outlaw.
I. H. Van Ness, Cutthroat.
—. Tilton, Bandit.

This letter was written on a piece of paper taken from a copy-book, which copy-book was found in Joseph's room, and no doubts could be entertained concerning the identity of the handwriting.

On the Sunday evening following, Joseph was told of the evidences of guilt which had been discovered, and was advised to confess, if only for the sake of his father and mother, who would otherwise also be implicated. He replied that he did not want to say anything that night, but would wait till morning. The next morning when told that his parents were arrested, he said: "It is no use, mother is innocent; I have been very wicked, but I have prayed all night, and feel the Lord has forgiven me,—and if I can go up and walk over the

dear little farm once more, I will tell all you want to know." Then he again spoke of his father's and mother's innocence, and said he wanted them restored to the farm again. He also declared that though under the control, for some time past, of "evil spirits," he was now entirely governed by the spirit of Truth. After promising that if allowed to revisit his old home, he would hold no consultation with the family in German, his wish was complied with. On arriving at the house he desired that some of the people present should withdraw before he made his confession. He then asked all present what they knew against him. And on being told, made the following confess on:

"You, father (looking at his father), are innocent. (Here the old man said 'tell the truth, Joseph.') The school house below here was entered by me, some time ago, and a bad spirit tempted me to do what I did at the school house. I did the damage in the School-House all alone. The evil spirit tempted me to carry on much mischief. I plundered the Jefferson School House alone, about midnight. A year before this, I had no idea of stealing books. Some of these were Sabbath Scho l books, and I found comfort in reading them. The Leeds School House was robbed by me, and I left a letter there by the inspiration of the evil spirit. I went in the Red School House between Athens and Leeds, and left a candle burning on the floor, and the candle burning down set fire to the School House after I left—the same night that I went to Leeds.

THE MURDER.

On May 1st, the Scissors-Grinder came to the House. I was down in the lot. We all talked in the house in a pleasant manner. After supper father and mother went to bed. Holcher went next. Then some very bad spirit entered into me. I went to my room. I opened my testament to read. Something seemed to force me to lay it down. I laid on my bed and the spirit overcame me. I resisted the spirit and the spirit resisted me back again. After I was completely overcome I went outdoors and got a hatchet. The old man was asleep when I went in his room. I think God has forgiven

me, for I am now telling the whole truth. I went in slyly with a low lamp, and set the lamp on the floor, and then my conscience fought with all its might not to do the act, but the evil spirit was stronger—I took up the hatchet and struck Holcher on the head. He made but little noise. I struck him first with the blunt end of the hatchet and then twice with the blade. (Here old Mr. Waltz said, 'I heard a little noise, but it soon stopped.') Holcher was still then. The man struggled a little while and then gave up the ghost. I dropped on the floor and laid there some time. I then got up alone, passed the barn to the stone wall. I then put a few blankets and stuff over the body. I left the body there all day. The next night when father and mother were abed I placed the body in a hole which I dug, and prayed over the grave for the repose of his soul. I felt better then. I had to conceal all I could, therefore placed the body in the ground. I cleaned up in the house and the sofa The old man (my father) in the morning, thought the scissors-grinder had stolen the missing blanket, and father went to Catskill and told Charles Ernst of it. I found in Holcher's pocket a pocket-book containing sixty or seventy dollars in paper—one fifty-dollar bill—and some silver coin. I took the machine down behind the fence. I locked up his bell in my trunk: Three nights afterward I traveled up near Coxsackie afoot, and then placed the letter on the telegraph pole, and left part of the broken machine. I wrote the letter the night before at home. I carried the parts of the machine in a bag I intended to go beyond Coxsackie, but was tired out. Part of the machine was burned in the woods. His clothes and boots I put under the barn for a spell, and after that I burned them. The various books I had locked up in my trunk I read as much as I could. I then put them in a box, and put them out of sight."

He now went out, and after wandering about the farm, finally pointed out the place where the body was buried. The ground was newly plowed, and there was nothing that would in anyway have caused suspicion about the spot. After the inquest, Joseph was remanded back to jail, where he remained nine months, waiting for his trial to come off. The first few days of his sojourn there were spent in writing a fuller, and

what seemed to him, evidently, a more satisfactory confession of his crime. It reads as follows:

HOUSE OF BONDAGE,
May 23, 1873.

My Dear offended and excited Friends!

I beg leave to have some reconciliation with you, in order that you may no longer be in any doubt of my truthfulness in regard to the terrible, shocking, and infamous deeds that I was forced by some mysterious power to do. You were already informed of the principal and most important causes of all this agitation; but it was an impossibility for me, or any one else, to explain to you at that time, the minute, and at the same time most indispensable details. The published bills dated May 19 which were in circulation among you, were incorrect, as were also the accounts given of my confession in the various papers. I therefore found it quite necessary to place before you the true and correct account of all my misdeeds and dangerous proceedings. *Remember well, my Dear Friends, that I am now speaking to you in a spirit filled with Heavenly Truth; which I received from God through the mercy of Jesus Christ our Lord.*

A STRANGE THOUGHT.

One day in January last, it seemed to me that there were a great many people on earth who were consantly risking their life and reputation in swindling, robbing, & deceiveing there fellow-creatures, for verious reasons & causes. Since that day it seemed to me as if something had planted itself in my mind, that kept urging me forward to perform some grand, heroic & enterprising feat, wether good or bad I could not say. I tried to forget it but it was ever before me. I began to lose much interest in my daily occupations, & the great appetite for learning, & knowledge, & wisdom, which I had was also lessened. My mind seemed to be clear; the main object to which it was now turned was to do something wholly out of the common course. Accordingly about 2 days after I had experianced this peculiar sensation I could no longer do without causeing some commotion or excitement. That very night of the third day I began

MY FIRST ROBBERY!

I arose from bed at about one o'clock A. M. making little or no noise to awake my Parents who were asleep upstairs. After taking a view of the weather through the window I went out of doors It was warm but very windy. I went to my room again, but could not think of going to bed; I wanted very much to rouse up something or somebody; when suddenly the thought came to surprise & cause trouble to some one. I thought of going over to the house of my nearest neighbor JAS. B. GOETCHIUS, and throw large stones at the door of his house & windows; when another thought flashed across me to go to the Toll-Gate, about half a mile off, & do something of the kind there, thinking the inmates would not find who did it so easily. I put on my boots & started for the latter in all haste. As I arrived near the place I began to lose much of my courage & sat down on a snow bank for some time thinking. I was about to get up & go home & leave all in peace, when I thought of the red school-house a short distance further off; my courage returned, & I was there in a few minutes. I entered a window at the east side and found the stove red hot & the room very warm; this frightened me, thinking there might be some one dwelling in the schoolhouse. However, I entered at last, and what I did there you all know; I had just such books at home of my own & could have no use for them. The reason that I took them was simply to rouse & excite the pupils & teacher.

Seeing all remain quiet, I did the same deed over again a short time after. This time leaving a note there containing remarks such as threating their life & using very profane language. Peace still continued & I was not satisfied. This yearning & tempting was incessant. About a month afterwards I started on another burglarious expidition. This was the Jefferson Sunday School! I entered it, forcing open a blind on the south side, about two o'clock A. M. By this time I began to feel some sorrow for these cruel acts & began to read some of the most pious & best of the library books I had thus obtained by theft They were indeed very good books; and having read the first one through, I began to realize & perceive my great wickedness; I was much com-

forted & read several more with good result. But I could not feel easy; there was something at my heart: I could not feel the authentic happiness that I used to, before I did this wrong; in fact every thing on which I cast my eyes seemed to have lost the third part of its real and genuine appearance. I could not look an innocent person full in the face, nor could I look at the starry heavens at night without much hesitation & some celestial spirit seemed to sweep over me & remind me of my guilty conscience when I made an attempt to kneel down on the spot where I stood to pray to God; but there seemed to be no faith in me, I could not pray as usual & became very restless Sleep at night was not to be thought of. My daily labors on the farm became very toilsome and disinterested.

From this time until the robbery at Leeds I have toiled on with this crushing burden of sins, having made many vain attempts to repent & do penance or make an open confession. One time I thought myself quite free from this evil power over me, but this pease was of short duration. It again seized me with great violence! I became very warm & my heart beat very quick and loud for a few seconds & all was over again, except this unceaseing urgeing & tempting. That very same day I was forced by this same power to think of nothing but doing something very extraordinary. It seemed as if I was to do something beyond my ability, When the day was over, it occured to me very suddenly to rob and burglarize the School-house at Leeds! It seemed as if something were telling me what to do; I wrote the letter that I left at the school-house, after supper that evening, and by the time my parents went to bed the letter was finished; when I made preparations immediately & was surprised at my presence of mind in getting together the things I needed for performing the criminal act. It was exactly as if I had been inspired by an infernal spirit that was leading me directly to the pit of distruction. I did not like to do it, I felt inwardly the great wrong I was about to do, & made several attempts to go to my parents & tell them of my troubled feelings, but I was utterly helpless & was forced back. I then enedevored to pray to the Lord, but all in vain; the evil power over me

was continually working against the earnest pleadings of my conscience. I hastily took some matches & candles & skipped swiftly across the meadows in the direction of the red school-house, on the road between Athens & Leeds. Arriving I forced open the door & lighted a candle which I placed between two blocks of wood. Having seen all there was to be seen & taking a broom a Bible & several small tracts & pamphlets I laid them behind the fence a little way off with the intention of takeing them when I came back from Leeds, and then left in haste, forgetting to go back into the school-house to put out the light, which doubtless burnt down to the floor between the two sticks of wood and ignited them, causeing the ruin of the entire building!

THE SCHOOL-HOUSE AT LEEDS!

The Moon having shown herself through the trees and her smiling maiden face seemed to be all in a blush and it seemed as if she were casting her heavenly smirk and blushing smile at me in derision and scorn. Every star in the celestial fermament seemed to me in its aerial career, and winking at me in such an earnest manner that I could not help thinking of and feel ashamed, of my wicked intentions. I cast my eyes to the ground and was greatly troubled; I sat down upon a rock for some time: but obtained no rest: my brains were all in a burning blaze, I jumped up and resumed my way untill I came to the door in a corner, at the west side of the Leeds School-house greatly exausted, and sat down; for I had some difficulty in finding it, having been very little acquainted with the place. It was twelve o'clock when I rose up where I sat, and then, with might more than man's, I threw open the door & entered, closed it again, & commenced to examin and scope the whole school-room, and left it in the confused state in which it was found in the morning. It was nearly daylight when I arrived at home and when I passed the red school-house, the smoke & flames were seething through every window & hole in a frightful manner. I skipped across the meadows like a centaur, with the heavy bag of books bell &c, useing the broom of the burnt school-house for a walking stick. "Verily, the way of the transgressor is hard." When I got home to my room, it was necessary to begin my secret

work afresh; for every thing was to be hidden & locked up out of sight of my parents. When all this was done I had to appear at my daily work, as usual, on the farm, which was all but an easy one.

From this time my mind was somewhat appeased, but I felt a heavy burden, as it were, continually pressing me to the earth; as if I were to sink through it; there was no strength in me, all my former cheerefulness & bouyancy was gone. In my ambulations and conversations with my parents and friends, I felt as one who had been in great peril & distress, and my lethargic impulse often causeing me to drop down where I stood, for which reason I kept myself as much as possible alone. As I could get no sleep or rest at night, I spent many a dreary one in eraseing & effacing the verious names in the stolen books.

Some time after this my sorrow for what I did became very great. I had a strong desire to go immediately to my Spiritual Director, Rev. E. O'Driscol, Pastor of the Roman Catholic church of Catskill and to Mr. A. M. Osborn, Councilor at Law, of Cats-kill,—and confess to them my whole secret. But to my ruin & distruction as ill-luck would have it, I found, by this timea glowing account of my evil proceedings in the *Catskill Recorder;* which was probably the reason that I lost all desire to make an open confession of my guilt, for it was stated in such a singular and inciteing manner that it seemed to relieve me of my sorrow & distress, and rouse up the old desire to do further mischief. I dropped the paper from my hands, and sank back in the chair, & was greatly vexed & troubled. I then read my Missal & was much comforted, after which I read in the New-Testament, the fourth, fifth, sixth, seventh & eighth chapters of St Matthew, and retired to my night's rest, much relieved of my uneasiness; but my great sins could never be hidden or droped from my mind, and a spark of this intense desire to perform some unnatural exploit, was still smouldering in my brains, & at times great fears would steal upon me, shaking me from head to feet. At one time I had a desire to leave my parents & go to some strange part of the country & keep myself concealed for a time to see if this evil power would not lieve me, or what it would

make of me, or wether it would cause me to injure myself or any one else. But we had so much work to do, that this was impossible. And so I toiled on with my parents who thought of nothing but pushing forward the many different things that were to be done before the regular planting time had come.

Thus we were engaged, when about the last of April we were visited by an old friend of ours, who went about sometimes in the spring as a Sissors-Grinder. He was an honest upright man respected by all who knew him. He lived as long as we knew him in the City of Albany. He was always very kind and friendly to us, and we were always on eaqually good terms with him and his family for several years past. As we always did before, we gladly invited him on this evening to supper, & that he could pass the night with us, and that he might think himself at home which he said he did. During, and after supper, we had kept up a pleasant & delightful conversation with each other as is usually the case with true friends that have not seen each other for a long time; and in this way was that evening passed untill bed time, which was about nine o'clock, when we showed our friend to bed which was on a sofa on which were placed some quilts & blankets for a covering. My parents then bidding him good night, left him and retired to there place of rest which was up stairs. I was now the only one up and sat down by the table & read the "*American Agriculturist*" for about half an hour when I felt sleepy, and was about to enter my room, when suddenly I was aroused, from all sleepiness, by this strong sensation in my mind to execute some uncommon or unnatural, and inhuman juggle! The power was much stronger and more sudden than I had ever experianced it before! I wanted to relieve myself of it, but I was utterly helpless. I began to become very hot, my ears were ringing & my heart beat very quick & loud for a short time & the hair on my head seemed to be standing upright. All this lasted hardly a minute when I began to become cool again, and every thing was very quiet. I took up a small Testament & began to read; I had scarcely finished the first verse, when some violent & electric force swept past my face, but without any noise whatever. (It was

like a flash of lightning if it could have been directly before my eyes, and without any noise) causeing me to drop my arm & book with a loud clap on the little table before me! I began to shake and tremble in every limb, great fear seized me for a little while, after which every thing seemed to run into my brains, I sat a few moments on my bed in great confusion. than I went out of doors, lamp in hand & searched for an axe or hatchet & went back to my room, and there, for the first time in all my life, a strong feeling to kill or strike some one on the head with great force, came to me! I was tempted by some demon or evil spirit. (for I could not perceive what else it could have been, that should exercise so strong & evil power over me.) I could think of nothing but of striking some fellow-being on the head. Had some one been with me at that instant it would have been dangerous for him! A great blow at somebody's head or brains at that moment, was my greatest desire! I pressed my forehead against a pane of glass, thinking the sudden cold would have some effect in producing a differant sensation, but all in vain; I turned down the lamp very low, took up the hatchet and entered the room of my friend, the Sissors Grinder; who was sleeping soundly. I placed the lamp on the floor directly below the head of my inconsiderate and now unsuspecting friend. I then cautiously bent over the form of the unconscious sleeper to see in what position his head lay. I took the hatchet & raised it up to the hight of the ceiling & was about to deal the deadly blow, *when the inward pleadings of my conscience warned and caused me to withhold the blow!!!*

I was about to turn away and leave the man in peace when I was again seizeed by the Demon & was forsed to raise the hatchet and give the fatal blow: but it seemed as if the strength and force of the blow that I was about to implant in the head of the peaceful sleeper, had all entered into the handle of the hatchet. I withheld the blow, took up the lamp & hatchet & went back in my own room greatly troubled in mind and spirit! I was about to give a loud scream, but I had no strength for it. I sat there as helpless as a babe, when all at once, a painful thrill or sting pierced my heart & brains and roused me up like a mainiac. I took the lamp & hatchet

up once more, and entered the room of the sleeping man placing the lamp where I did before, and raised the hatchet quickly, *but my heart failed me!* My forehead became wet with perspiration, & I stood there in delirium swinging the hatchet up & down above the head of the man, when at length, as if inspired by some satanical power anew I struck the man on the forehead! but the blow seemed to have no force as I delt it. He breathed with a deep noise, and doubting of its fatality I struck him twice with the cutting part of the hatchet not knowing for sertain where I hit him, and sank fainting & senseless on the floor where I must have laid a long time, when consciousness returned, and I beheld the dire Scene, the mangled body, the pools of blood, and the aweful thought of murder! I sank back again with a feeling of pain and horror which is impossible to describe! I then arose with a terrible shock from where I lay, and opened the door of this room, and the outer one *very slyly*, and found it raining & very dark. I wanted to go off and cast myself into a deep hole, or in a bottomless gulf and bury myself out of sight of the world! I could not bear to return to the room of the dreadful sight And I could not bear to think of letting my parents see and know of the horrible deed:

With these thoughts I walked back & forth in the rain in a very confused or deranged manner, for some time; then, with a fierce an energetic perception in mind & body, I went to the dismal room, took up the Corpse between my arms, (which seemed not much heavier than a child) untill I came near the barn when my load became as so much lead, I still kept on, thinking I should not have the courage again to take up the body, should I lay it down! when at last I laid it down beside a low stone fense, and dropped down besides it so much excited & worried that it was with much difficulty I retained my breath. I then wraped the body in the blanket and laid many small flat stones around it to conceal it, lisped a short prayer, and departed to the house, and there in all haste I began to clear off and erase all visible traces of blood about the room, and carry the boots, coat, hat &c &c. off under the barn where they remained during the following day, the machine I also carried off and placed it behind a fence

in the bushes and covered it up with brush and stones. It was now begining to dawn in the eastern sky and as I began another search to clear off all marks and trapings of the man I found the quilt and pillow on which he lay stained with blood ; I took them up and carried them off near to the place at the wall where the body was concealed, and hid them there.

I then went to my own room and found the man's bell standing on the floor outside I took it and locked it up in a trunk, closed the door of my room and went to. bed, I was there but five minutes when my parents came down and began there work about the house & barn as usual ; I got up again and went to the barn to help feed the stock, when my father asked me, "What it was that he heard some time in the night as if some one were gargling or breathing with something in the throat." I told him that I heard it too, and that I could not account for it, and that it was probably the habbit of this man to do something of the kind, as he told us the previous evening of his having a bad cold.—(This answer seemed to produce my desired effect and ease on my father, which I could easily read on his face, and as he answered in a kind of heedless way,) "very likely, he always seems to have something in his throat."—When he went on with his work, making some remarks about the beautiful morning and of the fine rain we had during the night. And now the thought came to me of my wicked lie and of having thus deceived my good honest father.

Every thing passed off quietly untill breakfast time when mother came to the barn, much surprised, and told us that the Sissors-Grinder had gone or deserted us, for his machine and every thing was gone she could not think otherwise. We all went down into his room in surprise. As we opened the blinds and the full light of day shone in, we saw faint traces of blood about the floor and on one of the blankets, when my parents became greatly excited and when they found the blankets, quilt, and pillow missing, they were astonished beyond measure. They looked at me and found me in eaqual surprise. (for I kept all the while imitating there own looks & actions.) They then made up there minds that this was a bad man and had taken the quilts & made off

with them thinking that perhaps he had injured himself in his attempt to go away in the dark. And such were there thoughts for a long time. Father, thinking it impossible for him to carry so many things went in search for him along the road toward Athens but he could find no trace or vestige. We had to much work to do to spend any more time searching for him or the things my parents thought he had carried off. But father was determined to have the thing settled, if he would have to go to *Albany* himself to find him. He went to see Constable ERNST of Catskill and told him of the strange affair. But all remained quiet and I began to think myself clear of all suspicion.

When night came and my parents were to bed I took some tools and began digging a grave in such a manner and on snch a place that it would be impossible to find it again, and then went up the hill uncovered the body by the wall and wanted to lift it up but to my astonishment I could not stir it! I stood back stupified with horror! I went to the barn and got a strap of conciderable length, and passed it around the corpse and began to pull with main force. I succeeded in moving it about a foot from the spot when I again attempted to raise it up but with no better success. I then went after the wheelbarrow and after many efforts of main strength I placed it at last on the barrow and wheeled it down to the final grave! Having laid it carefully in and wrapped it in the blanket, I knelt at the end of the grave & prayed for an hour & a half to GOD for the protection and repose of the soul of my friend whom I had thus caused to leave this world unprepaired and without a last look or parting word to his bereaved and afflicted Wife, and children, and friends. This being done I covered up the remains of my friend in great sorrow, in the name of the Father and of the Son and of the Holy Ghost, and procceded to the house and found it to be three o'clock. Knowing it was useless to try to sleep I went to the barn, pulled out from under it the coat boots jacket &c. &c. which I put there the night before, finding a handkerchief, I spread it on the ground before me, ane placed the contents of the pockets in it as I found them; and went to examin them, and found a silver watch a pair of spectacles a

pocket-book and a small parcel containing some silver coin, some razors watch-keys &c. &c. I found in the pocket-book a fifty dollar bill, some fives, and smaller bills, amounting in all to $82 with the silver coin. I then locked everything up in a trunk & went up to the barn again took up the cloths and carried them down the lot and hid them. What I did then, I do not know to this day for the Sun was shiuing and I found myself sitting at the foot of the grave of my departed friend in a very broken hearted condition! With great efforts I managed to get up, and trudged with great weariness to the house, I found my father already feeding the cows and I walked past unnoticed, when I got to the house I heard mother in the sellar, and I slipped quickly into my room unnoticed by either of my parents.

The hardships I endured were many and great, for to be working hard throughout the day and than still harder through the whole night is certainly going a little too far, regarding the frailties of Human Nature. Yet such was the course I had been taking, and, at a fearful rate, bringing death and distruction to my body and soul. I could not sleep, eat, nor pray; and, fatigued and weary as I was, this perpetual craveing and intense desire to outdo myself in something that would exceed the powers or laws of nature, was continually robbing me of all peace or rest. were it not for this Power I would have been as a dead man.

When the long and tedious day drew to a close I wrote a letter by the influence of this same visionary agent, and was astonished, not a little, when I read it to myself. I then tried to copy it on a separate paper, but when I had it half finished I dropped to the floor with a loud ringing and sibilant sound in my head, where I must have been during the night, for in the morning I found the little table upset against the bed and myself leaning against the door with a chair over me! when I endeavored to get up I could hardly bend a finger or limb, being as rigid and inflexible as death. Thus I lay helpless untill the firey thought returned, to perform the grand imposing, or majestic work, moral or tragic! Before this thought every morbid feeling fled. my hands became red as fire and with some pain in straightening my

arms and back I arose. I wanted to be off. I could not bear to think of sitting down to read or pray. my mind was ever wandering on the one great object ahead, and what this was, and how I should proceed to find, or get at it, is the one great question to be solved; and to which I must attribute the cause of all my aberant misdeeds. I felt after I had killed the man that it was not the great deed I wanted to do, for I was greatly disgusted and terror-stricken, and overcome with sarrow and grief for having caused the untimely death of my friend! and had lost all thoughts and desires of ever doing so aweful and terrible a thing! When this burning and tempting power had taken its first grasp on me I began to forget many things that I intended to do on the farm and lost all pleasure and interest in work or amusements of all kinds. To do one very grand thing, my whole soul and body seemed to be turned and based on. I could think of nothing but this, day and night, and would, at different times, be so overcome and excited that I would go off in haste and confusion to the woods, and walk about there as one in a dream. At other times I would drop down whereever I was; (this was most always late in the evening) and would remain there benumbed for whole hours, and two or three times I found myself sitting or lyeing in such places in the morning, where I must have dropped down without knowing it in the evening.

The Sun went down once more, and I returned home from the labors on the farm very tired and dejected, and after a little supper that I forsed down with great exertion, I took my hunting bag and went back down the lot and dug up parts of the hidden machine and other things belonging to the "lost" man, went back to the house and sat down waiting for my parents to go to bed, and then took my night's rest in marching to Coxsackie, I took the letter, a revolver, some powder & caps, and left, arriving by eleven o'clock at Athens, and at three o'clock at the telegraph pole where the trappings and letter was found. I climed the pole by aid of the ever urging force, for when there was any adventurous, dareing, or enterprising act to be done this dreadful and evil force roused me up so that it seemed as if I might do anything be it ever so difficult or great. The wire I cut apart, thinking it

would strengthen the belief that the deeds were performed by the "fictitious" band of highwaymen. I then posted the letter and returned my weary feet and heavy heart homeward, and then, Oh! my Dear Friends! the sarrow and grief I felt for my great wrong is impossible to describe! I thought of the snowbank where I sat, near the Tollgate, where I was about to go away and leave all in peace, a few months before!

I could not, myself believe that I could have done all these aweful crimes, when just a few months before I thought myself a true and faithful Child of God, having my greatest delight in praying to Him and thanking Him for His goodness in giving us so pleasant and peaseful a home with many good friends and kind parents with whom it was my greatest desire to be, and obey, help protect and comfort them in their declining years! *Oh, my Home, my Dear sweet Home!* that I should thus forsake thee! *Thy very rocks* and stones were my delight to see. While every plant and shrub and tree, received its diligent care from me. Oh, the time, when I never had one thought, one wish, beyond my pleasant farm; and now when I now looked back, with a clear mind, upon the dreadful, terrible, nefarious, transgressions, was filled with amazement and dread, and could not feel or think otherwise than of being deranged or over-powered by demons!

When the day was over again I went to bed very early and wanted a good rest, but so many strange thoughts of the past and future came chacing each other in such quick succession that I became very hot and restless I got up feeling very dizzy, and went to the grave of the "lost Man," and prayed; when I must have been overcome by the great fatigue and sleep, for at about four A. M. I awoke sitting in a very awkward position at the end of the grave! this was not the only night I passed in this way, for my sarrow, became so great, the burden of sins so heavy, and my wounded spirit so restless, that I did not know half the time what I was about. I often walked off a little way and then turn suddenly around and go back again to the spot and wanted to do something but never could think what.

But I can never tell you all the many strange thoughts and odd freaks that came across me at different times, and must close with a few remarks on

THE INQUIRY AND SEARCH.

In this way about two long sorrowful weeks slid by, and all seemed to be in pease but myself, and about two or three times I was roused up by the dreadful firey force that seemed to fill me with so eager and ambicious a desire that I wanted to go off alone to some solitary island or forest and do something uncommon or very great! at such times I would be very restless and dissatisfied with everything. The power was always the strongest at first when it would gradually desist, and I would become cool and more easy, and the great sarrow and sadness would return, for the great wrong I did.

We were hoeing strawberries on a fine day west of the barn, when a Lady fallowed by a Gentleman came to us and inquired wether we had seen nothing of her husband whom they said had not returned from his trip down the *Hudson* where he went about with his machine grinding scissors; my father told them that he had spent the night with us, and then asked them how it was that he came to go away in the night or morning, and continued that had taken with him a quilt a blanket and pillow and lieveing his bell here.

Then the woman became greatly surprised, and assured us that her husband would do nothing of the kind. It being now my turn to say something, but I was in an utter loss what to do or say, with some trembling and hesitation I told them that I could tell them no more than they already knew, and squat down nearly fainting and pretending to pick some weeds! as soon as I regained my strength I went toward the barn trembling with fear from head to foot, when I was requested to show them the bell, I hurried to the barn and hid myself, for I could not appear before them in such a brokenhearted condition; after awhile I summoned up my courage and went to the house, but found they had gone and my father censured me for not appearing with the bell. The rest of that day my parents were greatly excited, not knowing what the young man and the lady ment by there insulting look and rash disappearance! The following night when all was quiet I took everything in my trunk which belonged to the lost man and hid them at diverse places; the books &c I placed

in boxes and burried them also. A day or two after this, the search began; the officers, D. P. Bennett, Chas. Ernst & others finding the floor and sofa stained with blood, they immediately suspected me of having killed the man. I wanted to "own up," and tell them the whole truth on the spot, but I had not the courage, and knowing it was impossible to explain to them at the instant, of the dreadful power under whose influence I was rendered so confused and helpless, that I began to defend myself in telling dreadful lies, that gave me such a pain within, that I came near fainting several times. From this time I did nothing but lie! from the highest Officer down to the truest friend! Oh! the dreadful sting my soul received as I again denied my guilt before the venerable *Justice!* My brains were fortunately at this time quiet from the aweful burning power, and I could see and feel the great wrong I did in telling the dreadful lies; but having decieved the officers first, was obliged to speak the untruth to the end! Thus was my dear innocent father taken with me, for the first time in all our life into bondage! as I entered the iron-bound cell, a feeling of peace and ease came to me such as I had not felt for a long time! I thought of the quiet woods or island where I would like to have gone, when I was overcome by the terrible tempting power to outdo myself. At those times I had no fear of death or anything frightful; and if I could have got at the grand object in pursuit, I would have willingly risked my life and all to bring it to perfection. I sat down on the bench that stood in the corner of the cell and thought of the great battles and hardships that I underwent these past few months, together with the great wicked deeds that I performed, to still and quench the burning desires of this tartaren Tempter; the great distress and affliction it brought to the family of the murdered man, the great excitement, confusion, and sarrow it brought to my father and mother, my sister and brother, and all our dearest friends, should you be surprised, reader, when I tell you that I felt more relieved and comforted than I ever did before since the evil spirit seemed to have planted itself in me? Aye, just such was the state of mind as I sat there in the cell contemplating on the terrible subject; I knew that there

would soon be an end to my great sufferings which I endured, at those times when I was roused up by the formidable fiend. Death or the gallows were as nothing compared with the great fears and confused and firev desires that possessed my mind at those times! In this peaceable way or state of mind, I passed nearly two days without once thinking of confessing my great wrong, or the many lies I had spoken. When Sunday came around, a thought came to me for once in a long while, to pray. I did so, earnestly, and was much softened. My sins became much more conspicuous before me, and a faint voice within kept constantly telling me to pray more! I spent the whole sunday as long as I could see in reading and praying from a testament and prayer-book. When night came I knelt down and with a firm faith in the mercy of Christ Jesus; I beged of God to send forth His Divine Grace and receive my earnest supplications in return. I prayed without ceaseing and soon found that I was heard for such a mild and Heavenly Peace seemed to descend upon me as if it came from the very Throne of my Heavenly Father. I was greatly strengthened with this Divine inspiration and prayed on with great faith and confidence in the goodness and mercy of my Lord, and Savior Jesus Christ. My very soul rose up in gratitude to God for His Divine grace and mercy; and I continued beging Him to send the Heavenly spirit of truth unto me, and cast out the great evil Foe that had exercised so aweful a power in my mind, as to render me so helpless and insensible in my excited actions. I prayed for this last, in great an earnest for a long time; knowing that if *Jesus* would he could make me whole. A sudden flash came before my eyes and at the same instant felt a kind of contraction in my brains fallowed by a painful sting that caused me to drop to the floor in a half senseless or faintish swoon. And then, Oh, my dear reader, if I could but explain to you my feelings when I returned to consciousness that night! I felt so free from pain or distress, my heart was so light my mind so clear, my spirit so cheerful and quiet, that I could not but think I had arrived in the Land of Eternal bliss. I could not believe that I was surrounded by sheets of iron; I arose to find out if I were really in the cell

I had been placed, for it was very dark, my whole frame seemed so nimble and elastic that I thought I had slept for a century. As I moved a few feet from the spot with outstretched hands, I felt the iron bolts and bars of the prison window, I returned and droped down on my knees and began to pray in all earnest. I seemed now to be in my original clear senses, and this dreadful, vehement desire was gone, for I felt no tempting or urging of any kind, or any evil thought to do wrong or lie! My whole soul and mind was directed to my Lord and my God. I went on praying fervantly, beging of God to clense me from my great sins that I committed in my helplessness and burning excitement. I prayed for strength and courage to confess and explain to my friends all my wicked and secret doings. I found my request granted, and had a firm belief that my Merciful Father had restored me to my former good senses and peasefulness; and should you, my dear friends, hiss, sneer, or make a mockery of me, when I tell you that I have been forgiven? and that my good Heavenly Father felt pleased with my faithful and earnest prayers and true sarrows? "Oh, no," I seem to hear you say,—but say what you will: Jesus said to his Disciples, "I say unto you, that likewise joy shall be in Heaven over one sinner that repenteth, more than over ninty and nine just persons who neednot repentance." It was now just daybreak and I sat down on the bench and thought for a while how I should proceed to reveal my secret, I knew the hard and merciles Officers would put me to death or have me chained in some gloomy durgeon, all out of sight of the universe I was determined to have a last look on my dear farm and country. I accordingly requested of Sheriff D. P. Bennett and J. H. Meech the permission and liberty of going to the farm accompanied by father; promising them that I would throw the full light into the whole mystery, but they coldly refused to do anything of the kind, telling me that such a thing was not allowed; I turned back and sat down much discouraged at such an irony refusal. Thus I sat dejected when they returned some time after, with other officers, and gave there consent that I should accompany them to my farm. The day was pleasant and as we arrived, the eager crowd of spectators

began flocking around us and would stare at me like tigars that were ready to swallow me up at the first signal. I went to the house to make some necessary arrangements about my dress for conveniency's sake, and proceeded to take a walk about the farm, fallowed by many of the agog young gallants, whose only thought was to obtain a clue to the mystic circomstance. Having returned we went to the house and there as I sat down without having revealed anything, and asking them what proof or testimony for evil they had against me, the Officers began to think that now as I had seen that nothing much had been discovered to threw the guilt on me, I had outwited them, and would not tell them at all. But ler me assure you, Gentlemen, that such were not my thoughtst I would have made my full confession, had you nothing against me whatever! The Heavenly Spirit of truth was in me, and my gratitude to God for His Divine power and goodness, for casting from me the inexorable raveing Power, would not permit me to speak another falsehood if I were to lay down my life on the spot! By this same Divine truth I have now told you, my friends, of this whole mournful event. And I am, by the grace of my Heavenly Father, that I received through the Mercy of His only begotten Son Our Lord and Saviour Jesus Christ, prepared to die, and prepared to live, in Blessed Pease. *And the Lord Jesus our Advocat has assured us, even with an oath, "That all* SIN *shall be forgiven unto the sons of man:"—that is, if with hearty repentance and true faith they turn unto God.*

—In the matter of Waltz: Some of our exchanges have fallen into the error of supposing that he has been in the habit of reading trashy novels and sensational newspapers. Whereas he flatly denies ever having read such, and Mr. WALTON VAN LOAN says he never bought any dime novels, or any of that class of papers. The *Hearth and Home* and the *Agriculturalist* are the only publications he was wont to read. It seems to have made little difference what he read, whether the above papers, the *Recorder*, Sunday School books or the Testament. He always (by his own showing) continued to advance in his progress from deviltries to misdemeanors and crimes.

Concerning his condition while in jail, the pastor of his church, (R. C.) says that during his visits to him there, he observed at times unnatural appearances about his eyes. The first time he saw anything strange was about the last of June. On one occasion, when he went into the cell, Joe was walking around feeling about with his hands, his eyes were wild and wondering. One sleeve of his coat was in 'shreds." When he asked him what the matter was, he shook his head and looked up, but said nothing. He then asked him how his coat came so, but he made no answer. On four occasions, between the first of July and the middle of December, the priest declares that his "conversation, actions, appearance and eyes were wild," and that he could not get an intelligent answer from him at these times. That he was incoherent, spoke of an "sland in the Sea," and said that devils, evil spirits and serpents were after him. All his efforts to quiet him and give him spiritual comfort and relief were unavailing. The son and wife of the under-sheriff, who had charge of the jail till January, 1874, testifies to the fact of his having these spells while under their observation. She says that he was there some six weeks before she discovered anything very strange or unusual about him. These "spells" were all, more or less of the same character. They occurred at intervals of three or four weeks, and seemed to increase in frequency as the winter approached. The premonatory symptom was usually a refusal of food. At one time he went between four and five days without eating, he would then either be gloomy or silent, or would have a paroxysm during which he would be noisy, destructive, and, apparently maniacal. In the beginning of October he passed through an especially excited period lasting some four or five days. Though while in this state he took no nourishment his strength was almost superhuman, and "no demon could have raved or acted worse." Between his attacks he was often "bright" and pleasant in conversation, but he seemed to manifest little interest in his approaching trial.

While in jail he wrote a great deal of verse, sending man "Odes," etc. to different persons. The Testimony of the District Physicians who examined him while in jail, though

their opinions varied, and are of little worth, concerning the genuineness of his insanity, is useful in affording an idea of his physical condition. One of them stated that in his excited periods, he found that the pulse was much accelerated and that the temperature varied from one to three degrees above the normal standard, while in the comparatively lucid intervals these were natural. He was also thoroughly examined physically, and physicians declared that, though this elevation of pulse and temperature was present, the man was entirely free from all diseases of the heart, lungs, kidneys, stomach, &c. The general character of the attacks, they observed, were similar to those already described, as testified to by others. They were preceded by refusal of food, and characterized by delusions concerning spirits, devils, &c."

One of the means they employed to test the sanity of the man was the introduction into his cell of a printed list of "false symptoms of insanity." This he was claimed, by the deputy sheriff, to have followed in his manifestations afterwards. This paper was excluded from the evidence inasmuch as it was doubtful if he ever read it. He was often in a stupid, sullen condition, when it would be difficult to arouse him, or get any reply to questions. At other times he would be noisy, and rattle his chains. When asked the reason for this behavior, he would, sometimes, say, after much urging, "spirits; bad spirits." At these times his hair became stiff and bristling, his eyes were generally cast down, and closed; and when, with difficulty, he was made to turn them towards his visitors, their expression seemed wild and like one in great fear. His chief agitation seemed to be about the evil spirits tormenting him, though at one time he said that keeper Ernst, the man he afterwards killed, carried a pistol around with which he intended to shoot him (Waltz).

When not in these "spells" he was almost constantly engaged in writing prose and doggerel verse. He was often so, that he manifested no concern as to consequences that would result from the enormity of the crime with which he was charged. At other times he would make statements similar to those made in his written confession.

During his trial he was generally quiet; indeed, the hand-

cuffs were at first removed from him, though one afternoon, as the trial approached its close, he was said to have been violent and troublesome. As bearing upon the question of his feigning insanity, the theory held by the prosecution, the following statement of Judge Westbrook was claimed by the Governor to be of importance :

On the first day of the trial he was furious in the court room. That night one of the local physicians told him that he was hurting his case, and from that time to Thursday noon of the second week, Waltz was quiet and peaceable. He assumed through the trial an air of quiet indifference. As he sat directly in front of me, so that whenever I raised my head I could see him square in the face and detecting frequently, as I thought, a most anxious look toward a witness or the jury; at noon of Thursday I requested the doctor to tell him that his behavior was almost too good, and that it would be better for him to show some symptoms of insanity. This was done, and when Waltz came into the court that afternoon and the next day his acts of fury were repeated."

Whether or no this be a mere coincidence observed in the constantly varying condition of epilepsy, and of epileptic mania, or a deep premeditated purpose to deceive, we think those who have had much practical experience in this matter, will, in view of all the testimony in the case, have but little difficulty in determining. It is well known, however, to all such, that insane people are often extremely cunning, and will, at times, like the sane, feign for a purpose.

Waltz had nearly covered the walls of his cell with drawings of flowers, balloons, heads of men and women, and many meaningless and fantastic figures ; and scraps of poetry, for example—under a flower pot full of many different colored flowers—was written .

> " Dear Union Flag, within whose spell
> I find a safe defence from Hell,
> Nor Lion's face, nor demon's guile
> Shall break my flower pot the while."

Written in all the colors at his disposal, each word being of a different hue from the one next to it, was this :

"Far up in the moon no bad spirits go,
And as it will make a bright home for this Joe –
For there I'll see God and the angels no doubt,
And so I must go—my dear friends let me out.

And now let me shake off this slumbering trance,
And kill every devil, and onward advance,
For my spirit is like an inflated balloon,
In which I am going to sail to the moon."

Then the following, the stars are in red and the letters in black and blue :

A big red sun, with a lugubrious face in its centre, had written across its rays :

Sobians, feel thy power
At midnight's darkest hour,
Thou gentle sun.

And under a star close by the sun :

Sabians, fill thy power,
Which makes these spirits cower
Thou brilliant star.

The following was surrounded by a border of grapes and human faces :

The ghosts and sprites
That haunt the nights
Are dreadful sights.

Stretched across the room and on the walls were strings, on which were hung pieces of black cloth, gilt paper, &c. These he said were to "keep off the evil spirits."

The following is one of his first productions, in jail, is dedicated to the wife of the jailor :

With a motherly care and tender heart,
She would cheer me up in Creed and Tenet ;
And bring me all she had, a part,
For which I shall forget thee not, Miss Bennett !

——o——

As there within that iron cell,
I thought of God of Heaven and of Hell,
And of the Murdered Man I thought !
To whose dear friends the great distress I brought ;
And of my Father and my Mother,
Of my Sister and my Brother;
Who were in sorrow, dread and greaf, appalled,
As also were my dearest Friends.

And, here, that watchful Nymph, Miss Bennett called,
A bunch of sweet fresh flowers sends,
And leaves me with such a sorrowing smile,
That gave my heart a panic trial ;
Of all my past and future life,
Yea, like a two-edged dagger knife,
It pierced my heart to see her grieve for me !
For I knew she would gladly have me free.

Oh trust in God, Oh pray forever more,
So when we both shall reach that happy Land,
And meet upon that bright celestial Shore
We will join our Father's Heavenly Band,
And serve and praise Him there forever more.

Before the Lord the pure in heart shall meet,
The whole Heavenly Hoste in joy shall greet,
A faithful, and true repenting sinner.

Oh how willingly I should leave this life,
If I could tell you of the aweful strife,
That awful terrible tempting Power !
Whose victim I have been at that sad hour.
Let hard-hearted men tell you what they will,
You know that men, the soul can never kill;
And I, you know, was helpless at the time.
When I commit that awful, awful crime !
My brains were like a raveing mad man's ire,

I would not think of fear, or death, or fire !
But turned I was, to one majestic Deed,
And that I could not understand or read,
But was forced to do a terrible thing,
That often caused my head and ears to ring !
And often laid me senseless on the floor,
And than would rise and feel the force no more.
I turned to Jesus than and pryed,
For His Divine and Heavenlyaid ;
When the raving Power of madness came,
And took me off as if I were insane !
I longed to be on some lone island in the Sea,
Or in some solitary forest, quiet, free.
And there to do a thing of fame and majesty:
With which I'd gladly risk my life and all,
To rouse the World in wonder and appall !
The Power was so tempting and so hot.
T'was always there, and could forget it not.

Oh ! the heartless man, the pitiless youth,
That heard me tell in the Heavenly truth,
Of all my sufferings and helplessness;
Of all my true and senseless lawlessness,
And does not feel the godly sense of helpless guilt,
But who would rather see me at the gllows placed;
He is no Man, He Has no heart like God has built;
His very soul is on destruction based !

Has not our Heavenly Father Blessed us all
With brains ? And placed within that temple shrine of clay,
The Soul, the immortal Soul ? And, oh, say—
Are not those mortal brains to get diseased,
Become deranged, or possessed by evil powers?
As I myself have often been seized,
In those restless and exciting hours ?

I'm ready to die, I ask not to live,
Yet I think they could easily forgive,
A youth who never in his life had been,
A drunkard, smoker, swearer, or a cheat;
And who would Day and Night, his prayers repeat,
To God to keep him from the lion's den,
Of the degraded base and wicked men.
I have to tell you here Miss Bennett,
And if I could only make you ken it,
That so far as it is in my power :

To recollect, and think, and see, and know,
I was deranged and broken at that hour;
When I gave my intimate friend the blow!
By the firey impulsive Power,
I did the other cruel deeds you know!

MAY 31st, 1873. JOSEPH WALTZ.

Among the "Odes" handed to one of the physicians who visited him, is the following:

Dear Doctor, you are kind,
And gentle, and refined.
You come to see me here,
Where all is strange and queer.

No more I'll see the sky,
For soon they'll make me die,
Those strong and cruel men
Have chained me in this den,
And here they make me stay
Until the first of May,
When I'll be crucified
For that sad homicide.
They say I slew a man
By some infernal plan,
And struck him on the head
Until the man was dead,
But then his spirit flew
Up there to Heaven, too.
For he was good, I think,
He did not swear nor drink.
But this was long ago,
And now I hardly know
How this sad act was done—
Or where I used to run,
When evil spirits came
I was no more the same,
For by their burning charm
My spirit they did harm.
And now, sir, tell me why
I made that good man die,
And did not let him live—
Who can a reason give?
I say it was a dream,
A strange and chanting dream,
In which I did not know

That what I did was so.
There in the eastern skies
I saw the sun arise.
It shone the whole day long,
But there was something wrong.
I felt a strange desire,
Which made my soul aspire
To be Lunarian King.
I felt it oft before,
But this time it was sore.
But why this was just so
I really do not know.
At length I felt more peace,
The burning force did cease.
But then I was not strong—
I felt that I did wrong
I then began to see—
But thought it could not be
That I should thus have slain,
And crushed the poor man's brain.
They say I was deranged.
I say my soul was changed.
My spirit from that hour
Was stripped of all its power.
The demons robbed my soul
Of all its self-control.
But Lunary spirits came
And quenched the demons flame.
Good spirits from the moon
Did come to me at noon,
Like angels they can sing,
And I'm to be their king.

This is written in double column, and between them are the words :

From the earth to the moon
In a spirit balloon.

This letter is to the same person :

DOUBTING CASTLE, March 15.

DEAR MR. DOCTOR : I feel quite well to-day. I feel as if I were much relieved of evil spirits. God has brought me much peace. I am inspired now. He came to me while I slept. Dear Doctor, when these spirits torture me what have I to do with it? How could that man help it that Jesus cleansed

while on earth? Jesus did not put him to death, but cast out the demons. Can you not let me go home now like Jesus did? I have prayed to him, and he brought me much peace. I do not feel very well now, but am inspired by good spirits. Go to the court house and tell the Judge I want to see my farm. Why do they lock me up here so long? I am not speaking of nitro-glycerine explosions. I am a spirit as well as you are. If bad spirits confuse me I cannot help it.

You came here one day and peeped through the door,
You looked so gay and glad I thought of nothing more.
You came right here to chase and drive the ghosts to hell,
Your bright and shining face made everything look well.
Dear doctor, let me go out there where I can sing,
I'll give you all I know, my life, and everything.
Bad men have chained me here, and now I cannot walk,
They acted strange and queer, and would not laugh nor talk,
They say I once was bad, and killed a man one time,
'Tis very strange and sad, because I did the crime.
But it was long ago, and now I can't remember;
But it was all just so—they told me in December.
But I cannot see why
I made the lóst man die.
Or is it all a dream,
So strange it all does seem.

He now makes confession of another murder, which he claims to have committed prior to that of the scissors-grinder, but as the grounds indicated by him as holding the remains were thoroughly searched, and no body or anything of importance found, the crime was probably never committed, except in his morbid imagination. The confession runs thus:

APRIL 23d, 1874.

MY DEAR FRIENDS AND ENEMIES.—I have just come to the place of truth, which is the flowing fountain of all true peace and happiness—that is a sincere, full and clear confession of all the circumstances attending the killing of the other man. I have but a short time to remain in this jail of endless torture and infernal fear of the powers and charms of unclean spirits; yes, I shall take my flight soon for the spirit land. You may see my frame dangling at the end of the hangman's rope, but Joe will not be there; he will reign above. About three years ago there came a man to our house—that is, on the farm where I was before I came here. He was a German who had traveled far and wide with his awkward machine, with which he was very familiar. I was at work down in the lot and came home to dinner, but could not eat for I was tired. I saw this man's

machine standing there, outside the house, and as I entered I saw the man. I saw him before. We talked pleasantly for some time; I went out a short time, I think, and then went in my room; when I came out I killed him; I struck very hard, but after all I seemed to have no strength; but the man was dead instantly. I took him up, carried him off to the long, deep ditch, northeast of the tower, and then went back to the house to clean up the floor. I think there were some marks of blood which I rubbed out with a sponge which I found in the barn, and afterwards buried it in a hole in the ground. I hastily took the machine and broke it to atoms and hid it in various places, and afterward took some of the parts of the machine from these places and went off with them. I was very tired when I buried the man, but the spirits would not let me rest. I wrote a letter at night and went off and had a nice time, but it was nearly daylight when I was through. I think papa was trimming or pruning grape vines over the river. I went down to the river that night but I was not strong. I saw a boat there but I could not row out. I do not know where I went then. I went all over the farm to see if things were all right and took some things from under the barn and went down to hide them in the walls and stone heaps and in the woods. This was in the night, and as I went or was about to hide in the woods I saw a very frightful thing gliding through the trees in the woods where it disappeared. What it was I cannot say to this day. I sat down there on the spot till morning, when the sun shone brightly, and dreamed dreams. My father scolded me, I think, for not being there, but these things are all past now and many are forgotten. The last man is buried in a ditch running east and west, and can be easily seen from the tower. I burned some of the things of the man and hid others in a fox hole in the woods.

In the afternoon of the 29th April he murdered his keeper, Ernst, in the cell. Up to within a few days of the murder, Waltz had been in restraint, or chained, but as he seemed quiet, and as he promised to remain so, his chains were removed. At noon of that day, he is said to have grown "uglier," running to and fro in his cell, roaring like a beast, and throwing things through the window. Ernst, who was a powerful, muscular and fearless man, was in the cell alone at the time with him, and probably was asleep on the lounge. The murderer, with great strength, had torn from the floor a bar of iron, two feet long, and two inches wide, and which was screwed down crosswise to keep the boards more firmly in place. He then bent one end, to give it additional weight, and with this weapon he attacked his victim, beating him on the head and crushing his skull in several places. After, as he supposed, despatching his keeper (Ernst lived for a few hours), he covered the pools of blood on the floor with news-

papers. He possessed himself of the man's revolver and keys, but made no attempt to use either. When the sheriff and other jailors burst the cell door open, they found him cowering on the floor in a corner, mumbling and growling to himself. He made no resistance to the jailors when they took from him the revolver and keys, and chained him fast, but only continued his unintelligible muttering. He continued in this condition till the last.

On the day before his execution, the Roman Catholic Priest, who had been his pastor for years, and who attended him all the while in prison, made the following written statement :

I hereby express my conviction that Joseph Waltz is of such mental condition that he is incapable of receiving any one of the sacraments usually administered in such cases, according to the rite of the Catholic Church; and that during my frequent visits to him since a few weeks after his imprisonment, I was never able to say that he was of sufficient mind to make a sacramental confession, or to receive any sacrament. I further express my belief that if hanged on to-morrow, my services as his spiritual adviser will be of no avail.

V. P. DRISCOLE,
Pastor of St. Patrick's Church, Catskill.

CATSKILL, N. Y., April 30, '74.

After the murder he refused all food, and spent the night crouching in a corner, " resembling more an animal than a human being." Before the sheriff closed the door for the night, the widow of his first victim, Mrs. Holcher, and her sister, went in the cell, and said, " Joe, you know me ? Look at me ;" but he did not look up at them. The next morning he was unchanged, and when his mother and sister came in to see him for the last time alive, and wish him farewell, he remained unnerved, paying no attention and making no response to their supplications and entreaties to speak to them.

He was lead to the gallows with the same expressionless countenance.

The words of the death warrent fell on his ears unheeded. He seemed not to hear the question usually following this; and when the fatal noose was applied, he showed not a symptom of concern, or consciousness of what was being done to him.

It took but a few minutes, after the rope was cut, for life to be extinct. In some way, however, the knot in the fatal noose slipped, and he died, apparently, from strangulation.

Ten days after the execution, the Hon. A. M. Osborne, now on the Bench of the Supreme Court, and who ably defended Waltz, in a letter dated May 11th, says:

"My opinion is unchanged; *a raving maniac* has been hung. This I am convinced of." * * * * "I ought to say that from the very day of his arrest for the murder of Holcher, down to the day of his execution, I never could do or say anything to interest him in the slightest degree. As to his situation, his trial, his danger, or get from him the slightest suggestion or intimation in regard thereto, although I tried to do so on various occasions. I was his only responsible counsel."

The Hon. J. A. Griswold, one of the prosecuting attorneys, speaking of the report of the Commissioners in a letter to one of the physicians who examined the condemned man, also regrets that the Commissioners, in their report to the Governor, had not expressed sufficient doubt as to the mental condition of Waltz to justify his Excellency in granting time for further observations of the man.

LOSS OF CONSCIOUSNESS,

EFFECT OF,

UPON THE MEMORY OF PRECEDING EVENTS *

By Prof. FRANK H. HAMILTON, M. D.

President of the Medico-Legal Society, New York, Etc.

Some years since I was consulted by a lawyer of considerable experience in Criminal Jurisprudence, in relation to the case of a client who had been arrested for assault, under the following circumstances:

A woman occupying an apartment alone, in a tenement house, charged that she had been assaulted in the night, while in bed, by a man wearing a mask. That during the struggle which ensued, the man struck her with a club upon her head, rendering her insensible; and that she remained in this condition until morning, when, consciousness having returned, she called in some one who was passing. She was found with her clothes on, lying upon the outside of the bed, and with a wound, accompanied by considerable swelling, upon her forehead. She then stated how she had been assaulted, declaring that she had recognized the man, and upon her statement my friend's client was soon arrested.

I gave it as my opionion that, if she was insensible during several hours following the receipt of the injury, her testimony as to what transpired immediately preceding the unconsciousness ought not to be allowed much weight; and that the fact that she claimed to be able to recall all the events up to the final blow so distinctly, furnished, to say the least, some ground for suspicion that it was all a fraud.

Read before the Society Nov. 30, 1875.

Subsequently it was ascertained that this woman, who had borne a doubtful reputation among her neighbors, had been found drunk in the streets on the night of the assumed assault, and that another woman had lifted her up and conducted her as far as the door of her house. The case was dropped ; but my attention had been called to the value of testimony given under such circumstances, and from that time until the present I have continued to make and record occasional observations upon the subject, as opportunities have been afforded. My observations have indeed been quite numerous, but only those which have been carefully recorded constitute the basis of my present remarks.

South, in his notes to Chelius' Surgergy, mentions a case in which a surgeon, finding a woman in a comatose condition, suspected that it was due to extravasation of blood, and applied the trephine, when, upon the escape of the imprisoned blood, the woman recovered her senses promptly, "and was able to give a clear account of the manner in which the accident occurred." Perhaps the writer has reported the facts in this case correctly, and that there was no failure in the memory of preceding events; but this is not what always happens ; indeed, in a case of my own of a very similar nature, the patient having been blown up in a steamboat explosion, causing a fracture of the skull and a rupture of the middle meningeal artery, incision of the dura mater brought relief and restored consciousness ; but, although his recovery was complete, he was never able to recall any incident connected with the disaster, or any event of the day on which the accident occurred.

My experience has also led me to regard as apocryphal those stories which are now and then related in daily newspapers, and sometimes in journals devoted to science, of persons who, having been stricken with sudden loss of consciousness while speaking, have, upon the sudden restoration of consciousness after the lapse of many hours or days, proceeded to finish the broken sentence, or have taken up their thread of thought as if no interruption had occurred. When the unconsciousness has been transient or momentary, I think I have seen this happen ; but not when it has been complete

and prolonged It may not be proper to deny positively that such a case has ever occurred; but no such example has come under my observation, nor have I seen recorded a case properly authenticated.

It is apparent that the question which this subject opens, as to the admissibility of the patient's testimony under these conditions, have a very wide application, and that, if possible, they ought to be determined by a reference to carefully observed facts.

Complete, but temporary unconsciousness may be occasioned by a blow upon the head, causing concussion of the brain; by compression of the brain, ensuing upon a fracture of the skull with depression of the fragments; by extravasation of blood within the skull; by embolism or a cerebral artery; by syncope; by epilepsy; by the inhalation of anæsthetics; by alcoholic inebriation, which is only a form of anæsthesia; by the use of opiates and other narcotics; and, perhaps, by many other causes.

Even sleep, a natural event, and which occurs without any positive cerebral disturbance, may possibly, at times, cause a break or a failure in the memory. At all events it is a proper question for consideration.

In the large majority of cases, however, which come under the observation of the medical jurist, the insensibility will be found to be due to concussion or compression of the brain; caused by blows inflicted upon the head, or by the shock incident to railroad or other serious accidents; and it is quite probable that the laws which govern the recollection of preceding events will be found upon thorough examination, to vary according as the loss of consciousness may be due to one or the other of the many causes above enumerated; but my observations are not at present sufficiently extensive to enable me to note such differences, if they actually exist. No attempt will be made, therefore, to do more than to lay before you a few facts, and to suggest a few general inferences, but with no pretense that these inferences are entitled to be considered in the character of a well-established law.

You will better appreciate the pertinence of the examples, if we reverse the usual order of consideration, and place be-

fore you briefly the conclusions, before reporting the cases from which the conclusions have been mainly drawn.

First.—A temporary loss of consciousness does, in many cases, impair the recollection of events immediately preceding.

Second.—In some cases it does not.

Third.—Impairment of memory, caused by a loss of consciousness, is of two kinds.

(*a*) Complete obliteration of memory, dating from a period of time or from an event which the patient can distinctly name.

(*b*) Events may be remembered up to the moment of the receipt of the injury, but with a degree of confusion and uncertainty.

Fourth.—In the case of complete and sudden obliteration of memory, dating from a period preceding the injury, the length of this period will, in general, have relation to the degree and length of the insensibility. If the patient is unconscious but a few moments, or if the loss of consciousness is only partial, he may recall events nearly or quite to the moment of the receipt of the injury. If on the other hand, the loss of consciousness is complete, amounting to coma, and prolonged, it is probable that he will have forgotten events for some time preceding the injury.

Case 1—Unconscious three-quarters of an hour. Loss of memory, 10 seconds.

July 10th, 1854, James Smith, of Buffalo, was driving a pair of spirited horses, when he found his progress delayed by a buggy, which, for some reason, he was unable to pass. At length an attempt was made by Mr. Smith to pass, and his carriage was capsized, throwing him upon the ground, causing severe contusions of his head and face and a concussion of the brain. When I arrived I found him unconscious, and this condition continued some time longer, probably three-quarters of an hour in all.

After his complete recovery, which took place speedily, he was unable to recall any event connected with the accident except that he was annoyed at the obstruction caused by the

other carriage, and he was looking out for an opportunity to pass. The fact that he actually turned out and was capsized he was never able to recall.

Case 2.—Unconscious 3 *hours. Loss of memory,* 10 *seconds.*

Rufus Wheeler, aet. 17, of Buffalo, fell, Nov. 2, 1853, into the hold of a vessel, a distance of about twelve feet, striking on his head, suffering a severe contusion and laceration of the scalp, with concussion of the brain. Three weeks after the accident he could not recollect falling or even walking in the gangway ; he could only remember that he was about to go into the gangway. He was insensible about three hours, and he has lost the memory of events at least ten seconds preceding the accident.

Case 3.—*Insensible* 10 *seconds. No loss of memory.*

F. H. was hit by a ball club when 11 years of age; was knocked down and stunned for perhaps 10 seconds. Remembers feeling the blow, like a heavy thud upon his face.

Case 4.—*Insensible* 7 *hours. Loss of memory,* 5 *minutes.*

C. H. Kennada, of Toledo, when 18 years old, fell backwards about twelve feet upon a barn floor, striking upon his head and shoulders. He is informed that he got up immediately and walked away from home, and that he did not recover his consciousness for about seven hours.

When I interrogated him he was a student of medicine, and more than twenty years had elapsed since the accident occurred. The last circumstance which he could recall preceding the fall, was putting on his boots ; after which he must have walked to the barn a distance of twenty rods, and ascended the ladder to the barn scaffold. It is proper therefore to assume that he has forgotten events five minutes preceding the fall. For several years he could not remember dressing himself in the morning.

Case 5.—*Insensible* 5 *hours. Loss of memory,* 1 *minute.*

Thomas Miles, of London, Canada West, while carrying a heavy piece of timber, fell, and was struck upon his head by the timber. He was unconscious five hours. He vom-

ited, and bled from both ears. Eight months after the accident he consulted me, on account of a paralysis of the right orbicularis palpebrarum, causing the eye to remain permanently open ; a paralysis of the right side of the face, and a convergent strabismus, all of which had ensued upon the accident ; but in all other respects, physically and mentally, he was sound.

The last event preceding the accident which he could recall was taking up the piece of timber ; but after this he had walked five rods, and at least one or two minutes must have elapsed.

Case 6.—*Insensible* 1 *hour. Loss of memory, several hours.*

T. B., when about ten years of age, fell from a trapeze, a distance of about thirty feet, striking upon the back of his head. He was taken up insensible, and remained in this condition probably one hour. Now, after the lapse of years, he is unable to recall any event of the morning on which the accident occurred.

Case 7.—*Insensible* 6 *days. Loss of memory,* 10 *minutes.*

T. W. Lynch, of Allegany Co., N. Y., while at work in a saw-mill, June 25th, 1856, was crushed under a log weighing probably fifteen hundred pounds. He thinks his skull must have been compressed to a thickness of four and a half inches. Blood flowed freely from his mouth and nose. He believes that he remained in a state of nearly complete insensibility for a period of six days. He remembers, however, that during the first week he suffered great pain.

Two months later he consulted me. I found the right upper lid and all of the recti muscles paralyzed, and the sight of both eyes seriously impaired. In other respects his recovery was complete.

The last circumstance which he could recall preceding the accident was turning the log over, after which he sawed from it five boards. I do not know how long it would repuire to saw five boards, but I think I may safely say ten minutes.

Case 8.—*Insensible* 2 *hours. No loss of memory.*

Miss H. Green, of Royalton, Niagara Co., N. Y., was

stunned by a flash of lightning, and remained insensible about two hours, during which time she had several convulsions.

Four weeks after the accident she consulted me. I found she had paralysis of the optic nerve and of the sixth pair, but in other respects she was well. She informed me that she remembered distinctly seeing the flash of lightning which stunned her.

It will be understood that the young lady was not struck by lightning, as there was no marks upon her person or clothes. I will not suggest the possibility that there might have been a mistake as to which flash she remembered, since it is my impression now that both the friends and the physician informed me that there was but one flash of lightning on that day; but it is not so stated in my notes. I think it proper, therefore, to permit the case to stand as an example in which the last event preceding the accident is remembered; but it will be noted that the nature of the accident is exceptional, and such as perhaps would be most likely to be recalled; but probably no one was ever actually hit by lightning, who, upon recovery, would recall the blow.

Case 9.—*Insensible* 1 *hour. Loss of memory,* 5 *minutes.*

Thomas Bluett, aet. 22, was thrown from a wagon March 19, 1850, while his horses were running, and thrown head first against a curbstone, sustaining a fracture of the skull. I trephined him, and one hour after the receipt of the injury he became conscious. His restoration to health was eventually complete, except that he had lost his right eye.

He has since been able to remember that he harnessed his horses and mounted his wagon; but after this he drove sixty rods before the horses became frightened, and they ran some distance before he was thrown out. All of this he has forgotten.

Case 10.—*Insensible* 2 *minutes. Loss of memory,* 10 *seconds.*

Wm. Simmons, of Collins, N. Y., aet. 18, was kicked by a horse, March 13, 1853, causing a fracture of the right os frontis. He lost his consciousness, for about two minutes

only, although the fragments remained depressed until I saw him, which was on the following day. His recovery took place in a few weeks.

When the accident happened he had dismounted from his horse and led him four rods, as stated by two persons present ; but he remembers nothing after he had dismounted.

Case 11.—*Insensible several days. Loss of memory,* 10 *seconds.*

Wm. Farrell was kicked by a horse, causing a fracture of the skull and insensibility, which he thinks continued several days.

Thirteen years after the accident he informed me that he remembered throwing his cap at the horse, after which he ran to pick it up and was kicked, but never could recall anything after throwing his cap.

Case 12.—*Insensible several days. Loss of memory,* 10 *seconds.*

John Knoll was kicked by a horse, breaking his skull, and, as he thinks, remained insensible several days.

Some years after the accident I found a large space in the os-frontis, caused by the removal of bone at the time of the accident. He was well and intelligent. He remembers going into the field to catch his horse, but he does not remember chasing the horse, as he is informed he did, nor does he remember being kicked

Case 13.—*Insensible* 10 *minutes. Loss of memory,* 3 *seeonds.*

James S., aet. 28 was thrown from a buggy, striking on his head. Suffered a severe contusion and concussion, and was insensible fully ten minutes. Three months after the accident he could recall the fact that his horse was running, and that he leaned forward in his buggy, but he could not recall the fact that the horse left the track and that he was thrown out.

Case 14.—*Insensible* 15 *minutes. Loss of memory,* 2 *seconds.*

A. W., aet. 26, fell eight feet, striking upon a log. Insensible fifteen minutes. Remembers losing his balance, but does not remember the fall.

Case 15.—*Insensible* 2 *weeks. Loss of memory* 3 *seconds.*

David McKenzie, aet. 40, while superintending the construction of Niagara Falls Suspension Bridge, was struck by a falling timber, Oct. 11, 1854 He consulted me about six weeks after the accident, and stated that he was stunned by the blow and did not recover his consciousness for two weeks; that owing to the great swelling which ensued his surgeons did not discover a fracture of the skull until lately. His frontal bone was broken extensively, and depressed about one quarter of an inch. The whole right sid of his face, including the right eye, was paralyzed, but his intellect was sound, and he had already returned to his duties in superintending the work on the bridge. He remembered that some thing had given way, and that he warned the men to take care of themselves.

Case 16.—*Insensible* 30 *minutes. Loss of memory* 3 *seconds.*

Harvey, aet 22, fell and was traversed by the wheel of a loaded cart in Sept. 1853, fracturing the upper jaw and cheek bones, and causing a concussion of the brain which rendered him insensible half an hour.

He remembers falling from the cart, but does not remember striking the ground or struggling to extricate himself.

Case 17.—*Insensible* 15 *minutes. Loss of memory,* 3 *seconds.*

Jacob Dusenberger fell 15 feet from the loft of a barn and struck upon his head and shoulders. He was insensible about fifteen minutes. He remembers going aloft and sawing a plank, but has no recollection of falling or of any mishap.

Case 18.—*Insensible* 3 *minutes. Loss of memory,* 10 *seconds.*

Fred Conklin, aet. 16, fell from a swing, upon the barn floor, striking upon the back of his head. He was uncon-cious about three minutes.

He remembers taking hold of the ropes and getting ready to swing, but nothing more.

Case 19.—*Insensible* 15 *minutes. Loss of memory* 1 *second.*

John Campbell fell head first sixteen feet, striking upon his head. He was insensible fifteen minutes, and remembers that when he was falling he saw a beam projecting about half way down, and he thought to himself that he would catch hold upon it, but he does not remember trying to seize the timber, nor his farther descent toward to the ground.

Case 20.—*Insensible* 1 *hour.*—*Loss of memory,* 20 *seconds.*

D. Shepard, aet. 43, was struck by a locomotive, Dec. 8th, 1855, causing a slight fracture and depression of the skull and concussion of the brain. He remained unconscious about an hour. The last event which he can recall is looking out of the car, about twenty seconds before he was hit by the passing train.

Case 21.—*Insensible* 5 *minutes. Loss of memory,* 2 *seconds.*

Thomas Little, aet. 27 was struck upon his leg and thrown upon his head with violence, causing concussion of the brain. The injury to his leg was such as to demand amputation. He was unconscious about five minutes. The last event he could recall was by him placed at two or three seconds before the blow was received.

Case 22.—*Insensible* 3 *hours. Loss of memory,* 3 *seconds.*

Hiram Leech, aet. 38, of Great Valley, N. Y., was struck by the limb of a tree, Sept. 1, 1853, and was insensible three hours. He remembered seeing the tree standing at an angle and threatening to fall, but not the actual falling of the tree.

Case 23.—*Insensible* 4 *hours. Memory uncertain.*

W. Miles, soldier in the confederate service, was wounded by a sabre thrust in a charge made by Sheridan, April 9th, 1865, near Appomatox Station, Va. The sabre penetrated

the skull, causing him to fall from his horse, and loss of consciousness which continued four hours, when he found himself in the hands of the Federal forces.

On the 14th of May following, he was in the hospital at Point of Rocks, Va. The wound had closed and he felt quite well; but he could not remember whether the charge was made in the morning or afternoon, and all the events of the day preceding were greatly "mixed," as he expressed it.

Case 24.—*Insensible* 3 *minutes. No loss of memory.*

Dr. ——— informs me that when he was sixteen years old, he had an epileptic seizure while walking in the country. He remembers falling or leaning against the fence when the attack commenced.

Case 25.—*Insensible* 10 *minutes. Loss of memory* 3 *seconds.*

John Lamb, aet. 41, was injured by a railroad accident, March 14, 1865, the car being thrown down an embankment twelve or fourteen feet. He consulted me six months later on account of general impairment of health consequent upon the injury. His mind seemed to be in a sound condition, except that he said his memory was not as good as formerly. He remembers that the car was lifted on one side and that he thought of pulling the rope attached to the bell, but nothing more until he found himself being carried into another car.

Case 26.—*Insensible* 10 *minutes. Loss of memory* 3 *seconds.*

Vanwort, aet. 52, was struck on his legs, Oct. 12th, 1875, by the crank of a movable crane, breaking one of his legs and throwing him down. Within two or three seconds more he was traversed by the machine and hit upon his head and made insensible. He remembers seeing the crank give way, but has no recollection of being hit upon his legs or being traversed by the crane.

Cases	How occurred.	Nature of injury.	How long insensible.	Loss of memory
1	Thrown from carriage	Concussion of brain.	45 minutes	10 seconds.
2	Fall into hold of vessel	" "	3 hours..	10 seconds.
3	Blow from ball club	" "	10 seconds.	
4	Fall—12 feet	" "	7 hours.	5 minutes.
5	Blow from heavy timber	" "	5 hours.	1 minute.
6	Fall—30 feet	" "	1 hour.	—hours.
7	Crushed under weight 1,500 pounds	" "	6 days.	10 minutes.
8	Stunned by lightning	" "	2 hours.	Not any.
9	Thrown from carriage	Fracture and compression of skull..	1 hour.	5 minutes.
10	Kick from horse	Fracture and depression of skull, with concussion	2 minutes.	10 seconds.
11	Kick from horse	Fracture and depression of skull	Several days.	10 seconds.
12	Kicked by a horse	Fracture and depression of skull	Several hours.	10 seconds.
13	Thrown from a buggy	Concussion of brain.	10 minutes.	3 seconds.
14	Fell 8 feet	" "	15 minutes.	2 seconds.
15	Struck by a falling timber	Fracture and depression of skull	2 weeks.	13 seconds.
16	Crushed by the wheel of a loaded cart	Concussion of brain.	30 minutes.	3 seconds.
17	Fell about 15 feet	" "	15 minutes.	3 seconds.
18	Fell from a swing	" "	3 minutes.	10 seconds.
19	Fell 16 feet	" "	15 minutes.	1 second.
20	Struck by a locomotive	Fracture and concussion	1 hour.	20 seconds.
21	Thrown down with violence	Concussion of brain.	5 minutes.	2 seconds.
22	Struck by a falling tree	" "	3 hours.	3 seconds.
23	Sabre wound	" "	4 hours.	Memory confused.
24	Epilepsy	Epilepsy	3 minutes.	No loss of memory.
25	Railroad accident	Concussion of brain.	30 minutes.	
26	Knocked down	" "	10 minutes.	3 seconds.

In reference to that class of cases in which the memory of events is retained up to the moment af the accession of unconsciousness, but in which the memory is confused and uncertain, it may be observed that they are likely to possess the most importance in a medico-legal point of view. Those who have forgotten completely preceding events will make no statement in relation to these events unless they fully intend to swear falsely and to practice a fraud, and we may hope that the number of persons who will thus wilfully per-

jure themselves is not large ; but the other class of persons may testify honestly and yet very erroneously ; their memory of preceding events being in part correct and in part false There may be just enough truth in their statements to give a color, and to induce the court to accept of the whole without qualification or abatement. Under these circumstances the witness may, unintentionally, put language in the mouth of one which was uttered by another. He may transpose the order of events, or in many other ways deviate from the exact truth without knowing that he does so. He may even mistake the visions which flit through his mind while unconscious for facts ; or, what is more likely to happen, he may receive from the conversation of those who are about him when consciousness is returning, impressions as to what happenened before the accident, which will assume the character of convictions, and will be eventually regarded by him as having been recalled by an act of his own memory.

Recently a case has come under my notice which may illustrate the danger of accepting testimony of the class last described.

In the case of Filer against the New York Central R. R. Co., Supreme Court Monroe Co., N. Y., Jan. Circuit for 1873, it was in evidence that Mrs. Filer, in leaving the cars while under motion, at Fort Plain, was canght by her dress, thrown down, and dragged some distance ; from which it was claimed she suffered severe and permanent bodily injury. She was unconscious after the accident for at least half an hour, and perhaps longer

Being brought to the stand, Mrs. Filer testified that she was instructed by the brakeman to leave the car while if was in motion—thus throwing the responsibility of the act upon the Company ; that when she fell she "gave one terrible scream;" that a gentleman whom she particularly designated, shouted, "She is killed." * * * "Then the bell rang," and from this moment she lost all consciousness until she found herself seated in a chair in the sitting-room of the depot

Her statement that the brakeman told her to step down, as the cars would not stop any more, is contradicted by the brakeman himself ; and there are several other points in her

testimony, relating to the manner of the accident, which are denied.

This case was tried again, on appeal, in July, 1875. In this last trial I was called to the stand as an expert, particularly in reference to the character of the injuries which she had received; but incidentally I gave it as my opinion that Mrs. Filer's testimony ought, under the circumstances, to be received with great caution, although I entertained no doubt but that she testified to what she thought was true.

The jury gave a verdict again for the plaintiff, with increased damages.

In this case there was no evidence that the loss of consciousness was caused by concussion of the brain, or any other bodily injury; but it appeared to have been caused by fright alone. I have no reasons, however, to suppose that this fact affects the principle involved, or the rule, if any exists, governing the memory of preceding events, except as it renders it more probable that the unconsciousness was transient and slight; but the evidence went to show that it was not very transient or incomplete.

It will be observed, that in the brief presentation I have made of this subject, I have done little more than to open the ground for discussion and for future study. Some experience in examining these cases renders it proper, however, for me to suggest to those who undertake to prosecute similar investigations, that they will have to exercise great care in their examinations, rejecting, of course, all who were intoxicated before the receipt of the injury, or who were not sufficiently intelligent or honest to be trusted in their statements, or who had not completely recovered their intelligence since the receipt of the injury. The inquisition should be close and critical, even with those who intend to speak the truth, since it will often happen that persons of this class will declare at first that they can recall distinctly the last circumstance preceding the unconsciousness, when in fact they cannot.

I had finished writing this paper when, in the *New York Commercial* for Nov. 28th, I found the following notice for a new book:

"A new novel, named 'John Holdsworth's Chief Mate,'

has recently been printed in England. John Holdsworths' ship is wrecked, and the hero, after almost intolerable suffering, is rescued—the last of all the crew. Holdsworth regains his strength slowly and recovers, but he loses his memory. He forgets his own name, his wife Dolly, his profession, and the incidents of the wreck. 'He remembered nothing—literally nothing.' His actual life, as he was then living it, practically dated from the moment of the return of his consciousness. All that had gone before was pitch darkness. John Holdsworth lives in this state for four years in Australia under the name of Hampden. He then returns to England, and when he reaches Southbourne, and sees the old house in which he and Dolly lived, the memory which he had long believed dead awakens. He finds that his wife has married a drunken dentist to save herself and child from starvation, Dolly does not recognize him. He does not disclose himself to his wife, although he knows she is wretched with the man she has married and whom she does not love. John was not all unhappy, for he wins the love of the child born to him in his absence, by many acts of kindness. Here the story bears a resemblance to the plot of 'Enoch Arden,' but it is only a resemblance. The novel ends in the orthodox way. The drunken dentist is drowned, and John and Dolly are reunited. The writer of 'John Holdsworth' has placed before us a curious psychological problem. To support his case he quotes the story of William Stephens, from the *Noon Gazette*, of July 1772. William Stephens was wrecked, and rescued after having clung to a portion of the wreck for three days. On returning to England he remained for two years in entire ignorance of his past, until, his memory returning, he set off for Winchelsea on foot, and arrived to find his wife married to one Eel, a cobbler, whose life Stephens threatened if he did not restore to him his Nancy. This the cobbler wisely did, and so the matter ended."

I have no means of determining how much of truth there may be in the theory of Stephens, related in the *Noon Gazette* more than 100 years ago ; but in the light of my own experience it does not appear incredible, nor is the fiction of John Holdsworth improbable.

In conclusion, I will relate briefly a case which will be found reported, in my General Treatise on Surgery at page 526. A boy three years old, and who had already learned to talk as well as other children of its age, received a severe fracture of the skull, and was probably insensible for several days. He recovered, however, after a time, and was killed while serving as a soldier in the Federal army ; but after the injury it was found that he had forgotten the use of language and he had to be taught again as at first, beginning with the words pa and ma.

REPORT OF AN ADDRESS

ON

MILK,

IN ITS MEDICO-LEGAL ASPECTS.

By Professor R. OGDEN DOREMUS, M.D., L.L.D

"Public attention has recently been attracted to the method adopted by our Board of Health for examining Milk, viz: by the lactometer, and the senses. In our city we have attacks constantly made upon those who distribute the milk, chiefly in small quantities, and we fail to go back, step by step, until we reach those who perhaps really do interfere with the pure article. I can state from actual knowledge, having paid many visits to the country and neighborhoods of the city whence our supply is brought, that I have found that the method we adopt for criticising milk is rather a premium on dilution. For the removing of the cream and the addition if water is, I believe, chiefly due to the employment of the lactometer. I propose to show why the use of this instrument is erroneous, although it is so popularly received as a test of purity, and then to demonstrate how, by the employment of this instrument it becomes a very profitable business first to remove the cream and fabricate butter from it, and then send the milk to market diluted with water, which takes the place of cream and brings the milk to the proper standard of gravity. And first, we can never judge of milk by its gravity. If milk is permitted to stand there is a light portion of it that rises to the surface, which we call cream, thus showing that it is lighter than the rest of the fluid, and it is this cream that interferes with the working of the lactometer."

Given before New York Medico-Legal Society, January 26, 1876.

"In chemistry we test the gravity of fluids by different means one of the best being the little phial called the thousand grain bottle, and if we try milk by this, it gives us the gravity, but it is not at all a test of purity." The Professor then experimented with the lactometer in milk which, he said, had been taken from the cow an hour or so previous, and that he knew to be pure, and the scale showed 105 degrees. In cream alone the instrument marked 70 degrees. He then continued: "If we place it in milk diluted with water we find a similar result, namely, that it will sink in the milk that is diluted, hence we may have two samples, one rich with cream, and the other diluted with water to a certain point, and the lactometer will give the same result in each case; thus, it is impossible to determine by the gravity, whether the milk is rich in cream or is diluted with water; therefore we cannot trust the lactometer; it is no guide to indicate to us the purity of the article."

He showed by experiment how the "alcoholometer" would test the degree of dilution of alcohol with water, because water is heavier than alcohol; and on the same principle how the "acidometer" would determine the amount of water in sulphuric acid, for here the diluent is lighter than the acid; how the "oleometer" and "urinometer" are scientific aids where the substances we are seeking for, are uniformly lighter or heavier than the liquid tested.

"Since cream and water are lighter than milk, while caseine, milk sugar and the salts are heavier, it is impossible to judge of the purity of milk by its specific gravity."

"Mr. Wanklyn, a celebrated English chemist, announces in a work upon this subject that the lactometer is one of the most untrustworthy of all instruments If the lactometer sinks to a great depth, we can judge that the milk has been very largely diluted, but nothing else. In fact its use is a bid for adulteration. I tried the other day milk which stood at 113 degrees; the cream was removed, and it stood at 135 degrees. A gentleman in Orange County said to me, "Let the City of New York adopt the lactometer as the test of purity of milk, and I shall go into the milk business; but I shall start a butter factory at the same time." I took samples of

twelve different specimens of pure milk, which I saw drawn from the cows, and five out of the twelve were below the standard of 100deg.—98, 95, 94, 92 and even to 90 deg. On bringing that milk into the city and subjecting it to chemical analysis, I found this result to be due to the richness in cream. I remarked, that to have brought that milk into the New York market would have subjected the dealer to a fine, and possibly imprisonment This variety of milk must not be sold here, unless they will take off the cream when the lactometer will rise to 120 deg, 130 deg. or more, and then it is sure to pass the test. The great difficulty with the Board of Health is, "What shall we do? What instrument can we employ?" A complete analysis would answer were it not a process tedious and expensive."

"As the removal of a portion of the cream, and the addition of water are the methods ordinarily adopted for imposing on the public, the following partial analysis will serve.

Weigh about a teaspoonful of milk in a small shallow vessel; evaporate the water; the loss observed on weighing the residue, will indicate the amount of water. Extract the residue repeatedly with ether, benzole, or other solvent of fats; evaporate the volatile solvent adhering to said washed residue and weigh a third time. This loss will be the fat. These operations may be conducted in a short time. By a proper arrangement of a water-bath, many samples can be analyzed simultaneously."

That the microscope is apt to lead us to erroneous conclusions he showed by placing several drops of the same milk on different slides, and covering them with thin pieces of glass—each exhibited a field containing different amounts of oil globules; for the thin plates were attracted to the slides, some with more force, others with less power, and consequently pressed out more or less of the fat globules from the field of vision.

"I recommend medical students to place milk, say from different wet-nurses, in narrow test tubes to observe their relative opacity; then to allow the cream to rise, and judge of its quantity by the thickness of the layer; and lastly

to coagulate the milk with a little acid and a gentle heat, to learn the amount of caseine."

The Professor next exhibited a convenient water-bath, with graduated glass tubes, as arranged by the celebrated instrument maker of this city, Mr. G. Tagliabue, accompanied with a diluted alkali, and a diluted acid in bottles. He tested several samples of milk variously diluted, and showed that by agitating them first with the alkali, next with the acid, and then raising the temperature to about 190 degrees Fahrenheit, and then immersing the tubes and their contents in cold water, the depths of the various coagulations of cream and caseine indicated their comparative richness in these important ingredients. But his experiments with this method were too limited to decide on the full value of this arrangement; he would report further at the next meeting. He also had passed around among the members a small French instrument for showing the opacity of milk.

"My chief object in presenting this theme to the Medico-Legal Society was to solicit the discussion of the propriety of seeking legislative interference to prevent the introduction of skimmed milk, unless sold as such, or milk otherwise diminished in nutritive value, into our city."

"I have tested very pure cream where the lactometer sank to 32 degrees, at 60 degrees Fahrenheit; whereas one sample of milk, before skimming, stood at 113 degrees; after removing the cream it lifted the lactometer above its graduation, estimated at 135 degrees.—hence a very liberal dilution with water was necessary to bring it down to a reasonable point."

He again alluded to the fact that he had tested samples of milk which he had seen taken from the different cows in Orange county, and that five out of twelve, when cooled to 60 degrees Fanhreheit, indicated many degrees below the standard adopted by the Board of Health—100 degrees; one sample was as low as 90 degrees.

That he took these specimens to his laboratory, and subjected them to chemical analysis, which demonstrated that their low gravity was due to their richness in cream.

He said, in conclusion, "the lactometer had been discarded in every part of the civilized world. In France it was used only as a preliminary test, the method of analysis being the test, upon which punishment was based. There ought to be some protection against the adulteration of so necessary an article as milk. He thought it was within the sphere of this Society to obtain proper legislation upon the subject."

REPORT OF A COMMITTEE ON ADULTERATION OF MILK.*

The undersigned, a committee appointed to inquire into the provisions of law to prevent the adulteration of milk, and the sufficiency of tests to detect such adulteration, beg leave to report:

That they have had the subject under consideration, and are of the opinion: That the ordinance of the Board of Health of February 23, 1876, section 186, would be sufficient if enforced, and to insure its enforcement we recommend the enactment by the Legislature of a statute of similar import. That the lactometer, as a test to detect adulteration or impurity, is unreliable and practically useless, and that chemical science affords prompt, sure and simple means, at little expense, by merely determining the quantity of water and butter that will furnish the needed evidence in efforts to protect the public against the wrong complained of.

In the opinion that the lactometer is not reliable as a test we are supported by the best scientific authorities Among many others, the following may be named:

Wurtz's Dictionnaire de Chimie, p. 192: "There exists no constant relation between the density of milk and its chemical composition." Pages 198 and 199:—A table of seventeen analysis of cows' milk by standard English, French and German authorities, six of which had the specific gravity of 1027, and containing in some cases 8 per cent. butter.

Bouchardat and Quevenne, pp. 2, 3 and 7 of their work, entitled "*Du Lait.*"

Submitted April 5, 1876.*

Gorup-Besanez Lehrbuch der Physiologischen Chemie, 1867, p. 404; "From these researches it it is also evident that the specific gravity of milk cannot serve in determining its quality." Page 420: "The specific gravity, as we have already shown, gives absolutely no standpoint for determining the compositoin of milk."

Hoppe-Seyler, Handbuch der Physiologisch und Pathologisch Chemischen Analyse, 1870, p. 363: "Notwithstanding its use by many police boards, it (the lactometer) must be thrown aside."

Watt's Dictionary of Chemistry, Vol. III, p. 1022: "According to Baumhauer (loc. cit.), all determinations of the comparative purity of milk by instruments like those above described are very inaccurate."

J. A. Wanklyn, Milk Analysis, 1874, p. 8: "The lactometer is a most untrustworthy instrument." "There hardly ever was an instrument which has so utterly failed as the lactometer." Page 11: "From a careful consideration of the whole subject, I am convinced that one of the most necessary steps to be taken in milk analysis is to abandon the use of the lactometer."

Charles F. Chandler, Ph.D. American Chemist. July 1871, p. 26: "The lactometer is a very unreliable guide, as skimming causes the milk to appear better, while watering exerts the opposite effect. By resorting to both forms of fraud at the same time the normal gravity of the milk may be preserved. By analysis, however, we can decide the quality of the milk with more certainty."

Your committee beg to refer with approval of the opinion of the General Term of the Supreme Court, delivered by Mr. Justice Brady in the case of the People *vs*: John Kneib: "The vender of such an article deserves and should receive punishment; but the process by which the adulteration is determined should be free from doubt. If by tests made by scientific men, the lactometer or lactodensimeter furnishes only questionable evidence of adulteration, it should not be regarded as sufficient to warrant a conviction. There should be superadded evidence which would remove the doubt; and if analysis be necessary for the purpose, it should be made.

The milk supposed to be adulterated, and offered for sale, can be purchased and so tested that the result must be certain beyond reasonable doubt. The testimony given on the trial herein, and presented on this appeal, establishes clearly that such a test can be made. It may be troublesome, but the Board of Health seems to be vested with the necessary power to have it done, and the duty of protecting the community from illegal traffic, of which it is a dangerous element, demands careful and rigid scrutiny. When the proof is certain, the punishment should be as severe as the law permits."

The section of the ordinance above referred to is as follows:

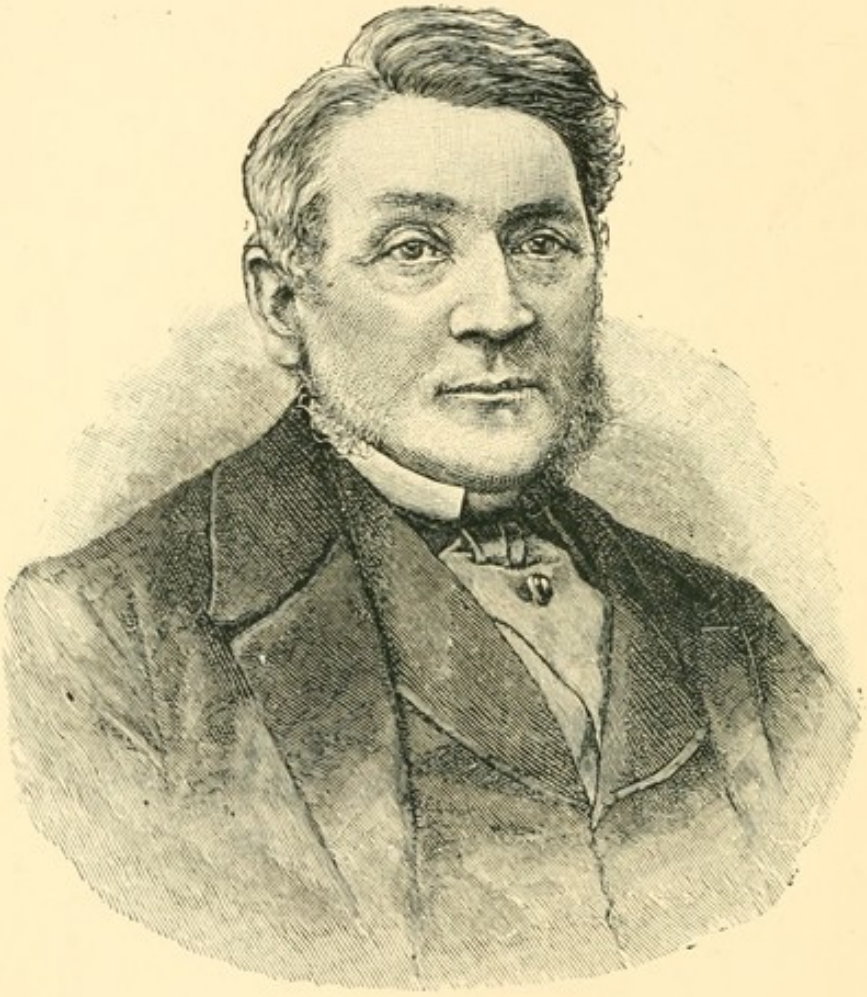
SEC. 186. No milk which has been watered, adulterated, reduced, or changed in any respect by the addition of water or other substance, or by the removal of cream, shall be brought into, held, kept, or offered for sale at any place in the city of New York, nor shall any one keep, have, or offer for sale in the said city any such milk."

Adopted February 23, 1876.

All of which is respectfully submitted.

R. OGDEN DOREMUS, M.D. GEO. H. YEAMAN.
GEO. W. WELLS, M. D. C. A. SEWARD.
T. C. FINNELL, M,D. R. S. GUERNSEY.
R. R. MCILVANE, M.D. D. S. RIDDLE.
A. N. BELL, M. D.

The Report was adopted as the sense of the Society.



ALFRED SWAYNE TAYLOR, M. D.

Dr. Alfred Swayne Taylor.

Dr. Alfred Swayne Taylor was born in 1806, and qualified as a medical man in 1828, after studying at Guy's Hospital and in the principal medical schools of the continent of Europe. In 1831 or 1832 he was appointed Lecturer on Medical Jurisprudence at Guy's Hospital, an appointment which he held till his resignation in 1878. During this period of forty-six years, Swayne Taylor acquired a great reputation as a medical jurist, ranking with those of Caspar and Tardieu. He was connected with most of the great English medico-legal cases for a period of thirty-five years, and was a trusted adviser and chemical expert of the British Government.

Though not exclusively, it was chiefly as a toxicologist that Swayne Taylor acquired his great and justly merited reputation; and his name is indissolubly associated with the trial of Terwell for poisoning his mistress with prussic acid, and with that of Palmer for the murder of Cook by strychnia. Taylor's "Principles and Practice of Medical Jurisprudence" is a standard British text-book among lawyers and medical men; and his work on "Poisons," though somewhat out of date, is a valuable work of reference. For many years he edited the *Medical Gazette*, and was an accomplished and prolific writer. Whatever he undertook, Taylor did well, and being all his life possessed of sufficient means, no pecuniary advantage ever led him to undertake what he had not sufficient time to carry out thoroughly.

In person, Dr. Taylor was tall, erect, and imposing, with a singularly penetrating glance and handsome, dark eyes. His manner was most graciousto students, strangers, and friends, but he was a bitter and relentless foe to anyone who ventured to oppose him, especially in his own department of professional practice. As a witness, he was magnificent—

cool, suave, positive, and not to be shaken on cross-examination or when opposed by other distinguished professional opinion. His hatred of lawyers found full vent in his text-books on medical jurisprudence. Those who knew him and saw how he was respected in private life, would scarcely suspect how keen and sarcastic he could be to foes. He was an Honorary Member of the Medico-Legal Society, and his memory and talents are universally respected in all English-speaking countries. T. S.

The portrait is from a photograph kindly furnished by his surviving daughter, and the notice by his warm friend and admirer, Dr. Thomas Stevenson, of London. C. E.

"Mysterious Disappearances,

AND

PRESUMPTIONS OF DEATH IN INSURANCE CASES."

By WILLIAM G. DAVIES, A.M., B.S., of the N. Y. Bar.

In looking over the titles of the papers which have been read from time to time before this Society, I observe that it has exercised a most catholic toleration towards their authors, and allowed them to treat of any subject which appeared to be even remotely connected with the object of its existence. An especially favorite topic seems to have been suicide, and the always interposed plea of insanity in life insurance cases; and with that fact in view, I do not feel that I am asking too much indulgence when I invite your attention to another class of frauds perpetrated upon companies engaged in that business; and even if my discourse is not sufficiently profound to entitle it to rank with the many able and thoughtful papers which have been read before this body, it is well to remember that the bow of Apollo was not always stretched, and that it is good sometimes to unbend and waive instruction in favor of entertainment.

Before entering upon my subject, permit me for a moment to advert to the unreasonable nature of the charge now so frequently made against life insurance companies, that they seize every pretext to resist the payment of a claim; and complaint is especially made, that after receiving premiums for years, they will, when death occurs, object that some false

Read before New York Medico-Legal Society, March 1, 1876.

statement has been made in the application which avoids the policy. To the careless and unthinking such conduct does appear to be reprehensible, and it would seem at first sight that companies should make their initiatory examination so rigid and thorough, that after the applicant has once been accepted, a policy issued to him, and his premiums regularly paid and received for a series of years, they should be concluded by their action, and estopped from raising any question as to the physical or moral condition of the insured at the time of the examination, So attractive is this idea to those who have merely glanced at the superficial aspect of the question, that the Legislature of a Western State, a few years since, solemnly enacted that after a policy had been issued on a life, and the premiums regularly paid for three years, no defense should be interposed by the company in an action on the policy on the ground of misrepresentations made in the application. Unfortunately for the object which these modern Solons had in view, their respect for the principles of the Common Law campelled them to add, *except in cases of fraud*, and as that defense would be made by a company only in such cases, the statute avoids itself. The constitutional prohibition of the enactment by any State of an act impairing the obligation of contracts, would probably render such a statute worthless; but the one thus cited is curious as showing the endeavor of the legislators to remedy what they considered a wrong, and yet what they were obliged to confess that they considered a right. For the insurer of a life stands in a very different position from him who insures a house; the latter may examine his risk carefully and thoroughly—he may measure its distance from adjoining buildings, the nature of the walls between it and them, the internal supports, the arrangement of the heating apparatus, the character of the roof, the probability of total or partial loss in case of fire, the efficiency of the department on which he must depend for the extinction of a conflagration, the nature of the business carried on in it and adjacent buildings, and every conceivable element which enters into the calculation of his risk. They are all existent patent to his investigation, and it is his own fault if he does not enter

into his contract with a clear and perfect understanding of the risk which he assumes. With the insurer of life the case is very different. Certain elements of the calculation are of course within his reach. He can estimate properly the influence of the climate in which the proposed life dwells, the hazard of his occupation, the especial diseases to which his locality is exposed and the average length of human life. From all these facts he can deduce a table of life which will enable him to rate exactly the cost of insuring the theoretical man. But when he comes to carry his theories into practice, he has in reality no means of ascertaining whether the life proposed reaches the average standard but from statements made him by that proponent. The medical gentlemen who honor me with their attention know very well that there may be inherited, or even acquired tendencies towards certain diseases, which no physical examination will detect, and against which the insurer can be warned only by a true and accurate family history. The tremendous influence over the question of life or death which is wielded by such tendencies, by habit, by temperament, is an important factor in every calculation upon a single life, and cannot be properly estimated unless every circumstance or fact which the insurer desires to know is stated to him fully and accurately. I have in my mind at this moment a case in which the applicant for insurance presented a clear, unquestionable record. One sister had died of yellow fever—it was true, but he omitted to add that, had the fever spared her, she would have died of consumption within six months. Another sister died of suppressed menses—it was also true, but he omitted to state that vicarious menstruation ensued from the lungs, and caused her speedy death. So with several other members of his family, who with well developed phthisis, had actually died from other causes. The applicant himself was apparently sound, and physical exploration failed to discover any symptoms of disease, yet his death within a year from consumption showed that he must have had strong tendencies towards that disease, and investigation developed the facts I have detailed. As is usual in such cases, no ground of suspicion was presented until the death occurred. Then the very fact of such a death

showed that misrepresentations must have been made, and not until supicion was thus aroused was such an investigation deemed desirable. It is practically impossible to verify at the outset every statement made by an applicant for life insurance, and as he knows, and from the nature of the case must know, the truth or falsity of what he alleges, it is only just that those claiming under him should be bound by his representations. If his death occur from a cause or under circumstances inconsistent with his statements, the insurer is, for the first time, informed that those statements were false, and is justified, both in law and in good morals, in resisting a demand based upon a contract into which he was led by the misrepresentations of the contracting party upon whom he relied.

Yet, when we consider the magnitude of the business of life insurance in this country, it is surprising to see how few cases are contested out of the immense number which are paid without a question, although many of the latter are doubtless tainted with fraud.

From the last report (April, 1875,) of the Insurance Superintendent of this State, I find that fifty American companies reported to him in detail their business for the previous year. During that period these companies returned to their policy holders in payments for death-claims, and lapsed or surrendered policies, over forty-eight millions of dollars, while the entire amount reported as in litigation was but little over one million. That is to say, the total amount of claims disputed for every cause, and many of which had been pending for years, was only a trifle more than two per cent. of the sum paid to their customers in a single year. The bare statement shows the absurdity of the pretense that these companies *prefer* to dispute claims upon them, and it may fairly be added that no solvent company ever resists a demand willingly. No matter how just the resistance may be, or how bare-faced the fraud which may be attempted, the fact of the resistance is all that strikes the popular attention, and it is made a handle for attack and abuse. Were it not that the officers of these companies are usually honorable and high-minded men, who properly appreciate the sacredness of their

trust and their duty to their honest policy-holders, we should hear nothing of contested claims, and a grand field would be open to modern rascality.

It must be noted that this statement of litigated claims includes every variety of demand, from that based upon a doubtful point of law, to that resting upon the most outrageous fraud.

If this digression has answered no other purpose, I trust it may have shown that while life insurance companies are extremely averse to litigation, they are peculiarly exposed to frauds, and prepared the way for the consideration of the particular class of rascalities to which I invite your attention.

The number of people who live by their wits depends upon the state of civilization of the country in which they exist and increases *pari passu* with the latter. When a man, as in his primeval state, is utterly dependent upon his own exertions, and must kill and cook his own dinner or go without it, rogues have no field for their operations; but with the increase of mutual dependency, and the accretion of individual or corporate wealth, comes the opportunity for its fraudulent attainment. With the opportunities which life insurance companies offer for a heavy insurance and a simulated death, it is singular that this field has not been more freely worked, to use the professional slang, yet the few instances I have to detail are all that have been *discovered*, although no one knows how many frauds have escaped detection.

Mr. John Francis, in his entertaining work entitled the "Annals, Anecdotes and Legends of Life Assurance," with all his laborious research, has been able to find but two such instances of attempted fraud. The first occurred at Berlin, Germany, in 1848, where a surgeon had been bribed to certify to the death of a person heavily insured, and a coffin filled with stones and rotten straw was solemnly interred with all the religious ceremony and friendly attention appropriate to the occasion. Unhappily for its instigator, the plot was soon discovered and all the parties interested properly punished. The same trick was attempted a few years since in a Western State, with the same result.

The second case related by Mr. Francis shows rascally

genius, and was so well planned that no suspicion was excited and success was achieved. A party of four men in London hired a boat one evening about dusk, just below Blackfriar's bridge, and proceeded for a pleasure excursion up the Thames. While rowing quietly along and not far from shore, the boat was suddenly and apparently without cause overturned, and its four occupants were struggling amid the darkness in the water. Their cries for help were speedily answered by the numerous boats in the vicinity, and three of the party were soon in safety, but the fourth could nowhere be found. Careful search was made without result, and the survivors were loud in their lamentations over the unhappy fate of their dear friend. They were compelled reluctantly to leave the spot where he had been lost, but not before offering a large reward for the recovery of his body. Late that night the same party in a small boat with muffled oars, proceeded stealthily down the river, and placed a dead body procured from some hospital or cemetery at a point on the river bank, where the tide would be likely to throw a corpse drowned at the spot where their accident had occurred. The next morning they reappeared upon the scene, heard with astonishment and delight that the body of their deceased comrade had been found, recognized the corpse at once, and paid with alacrity the reward which they had promised. The coroner's inquest was held in due form, the accident described, the three survivors identified the body as that of their deceased friend, and a verdict of accidental death was duly rendered. The proceedings with other proper proofs were presented to the company which had a large insurance on the life of the supposititious deceased, and as everything appeared to be perfectly regular, the money was duly paid to the claimant. Not until the parties concerned had the audacity to attempt the same operation a second time, was the fraud discovered. The admirers of Mr. Chas. Reade may remember that he has worked this incident into the life of oné of his characters in a recent novel.

An ingenious gentleman in Massachusetts, who had embarrassed his affairs by a long continued series of forgeries, and had become somewhat apprehensive of the result to him-

self, recently endeavored to solve his difficulties by a mysterious disappearance from a Fall River boat. He was known to have left New York on it, but was not seen the next morning, and on examination his outer clothing was found in his state-room, but no trace of himself. His life was heavily insured, he was known to be financially embarrassed, and the first supposition naturally was that he had committed suicide. Unfortunately for the success of his well-laid plans the victims of his crimes were sufficiently skeptical of his death to secure a large detective force to trace him, and their efforts resulted in his arrest at San Francisco as he was about to embark for Australia. His plan of operation had been very simple—he merely left the suit of clothes he had worn in his state-room, taking another from his valise, shaved his beard and whiskers, and stepped forth so altered that no casual observer the next morning recognized him as the man they had seen the night before.

More careful construction of a plot and greater attention to details was shown by two men named Shepherd, who concocted a fraud upon three insurance companies some two years since. About the middle of July, 1873, one George Shepherd called at the house of a farmer in Maryland, living near the Potomac River, nearly opposite Alexandria, and asked and obtained permission to spend the night. One of the family was a boy about sixteen years of age, apparently a simple, well-meaning creature not overburdened with brains, who seemed to Shepherd a fitting tool for the scheme he had in mind. In the course of the evening's conversation he suggested to the farmer, who spoke of his desire for additional help in harvesting, that he had a brother living with him in Alexandria who would be glad to accept a short engagement. The proposal was accepted and James Shepherd entered into the farmer's employ, his brother visiting him almost daily and thus continuing his own acquaintance with the family. After a week of these preliminaries, James, who had by this time become quite well acquainted with the boy already mentioned, proposed to him one evening to go out on the river for a fishing excursion with his brother George, and the two together went to the water, where they found

George in a boat. This latter had some peculiarities of construction which are entitled to especial mention. It was an ordinary working boat about twelve feet in length, having two seats in the centre, but none in the bow or stern. On the latter was fastened a platform which projected out over the water some ten or twelve inches, and almost as much on each side, and a rope ran along the outside of the boat from the bow to the stern, and dragged some additional length in the water. The weather was warm, but George wore a rubber coat over his other clothing. In this boat thus prepared the party started about dusk, James and the boy each pulling an oar and George sitting in the stern. They stopped twice and anchored to fish, and having consumed the time until it was quite dark, the night being cloudy, the Shepherds proposed to pull up the anchor to go ashore. They were then on the flats between the channel and the shore, the moon was obscured by thick clouds, and the only light visible proceeded from a light-house on the Virginia shore opposite to them. On the return trip the position of the parties was somewhat altered ; George sat in the bow of the boat, the boy in the centre, pulling both oars, so that his back was towards him and his attention fully occupied, and James on the other seat. Suddenly, as the boat was proceeding quietly without any jar or shock, a splash was heard, James cried out that his brother had fallen overboard, and the boy turning his head, saw him for one brief instant near the boat on the surface of the water, beneath which he immediately sank. The two rowed about for some time, and poked with their oars on the bottom of the river, but of course did not find what one of them, at least, knew very well was not there. After fifteen minutes spent in this useless employment they proceeded to the shore, when the boy was at once sent to a distance to inform a neighbor of the accident, thus giving George an opportunity of coming out from under the stern of the boat, where he had supported himself by the rope, and betaking himself to a place of security. The neighbors were told the story, and urged to search for the body, but the rogues were inferior to their English prototypes in neglecting to procure a corpse to personate the ab-

sent one, and no body was ever found. James remained in the farmer's employ for a few days longer, until he had recovered from his grief sufficiently to enable him to take the boy before a notary public in Alexandria, and have him swear to an affidavit detailing the circumstances of the death of George as he understood them, and then he too disappeared from view for a while.

About this time the police of Alexandria became very much exercised about the mysterious movements of some men who appeared to be living in a swamp near the town, and as it was feared that they were plotting burglaries at least, it was decided to effect their capture. A sudden and unexpected movement resulted in the discovery of the Shepherds' boat, containing two men, one of whom escaped at the first alarm, but the other, who proved to be James Shepherd, was taken prisoner. He was found to be heavily armed, and to have on his person three policies of insurance which had been issued by as many companies upon the life of his brother George, and the affidavits of the latter's death made by the boy and himself. In his first fright and alarm he confessed the whole fraud, but subsequently decided to contradict his statements, and to plead not guilty to the indictment which was found against him for perjury in swearing to his brother's death ; the event proved his wisdom, for the jury before whom he was tried were unable to make up what they were pleased to call their minds, although several witnesses deposed to having seen George Shepherd since the time of his alleged death, and their disagreement was a virtual discharge for the prisoner. He was so emboldened by this success, that he had an administrator of his brother's estate appointed in Richmond and commenced a suit on the policies in his name. It is needless to add that it is not one which gives the companies interested much anxiety, familiar as they are with the extraordinary vagaries of petit juries.

A very striking instance of the tendency of the average jury to find a verdict against a life insurance company in all cases, without the slightest attention to the law or the facts involved, is afforded by the Goss-Udderzook conspiracy, which reached its final determination year before last in the

execution of one of those parties for the murder of the other. The whole case is so startlingly dramatic and so thrilling in its incidents, that I trust I may be pardoned for dwelling upon it at some length.

In the winter of 1871–2, Winfield Scott Goss was a young mechanic in the city of Baltimore, a man of about thirty-six years of age, of considerable inventive ingenuity, devoting much of his time to new mechanical devices, somewhat indicted to intemperance, of superb physique, and, unfortunately for himself and fellow-conspirators, of conspicuous and striking presence. A good-natured, good-humored fellow, not possessing a high order of intellect, rather idle and shiftless, and completely under the control of his brother-in-law, Wm. E. Udderzook, who is the villain of the story. Goss had for two or three years carried a policy of $5,000 on his life, when the plan was formed to perpetrate a deliberate fraud upon the insurance companies. As the existing policy was hardly a sufficient prize, the first step was to increase the amount, and in December, 1871, Goss applied to other companies for two more policies of $10,000 each. Being physically an excellent risk he was at once accepted, and having raised the funds to pay the first quarterly premium on each, he was in possession of policies aggregating $25,000. His next step was to announce to his friends that he purposed entering upon a series of experiments in the hope of making an artificial india-rubber, and with this ostensible object he hired a small shanty some distance from Baltimore, on the York Road, in a thinly settled neighborhood, where he established his laboratory. On the second of February, 1872, Goss and Udderzook went together in the afternoon to this building as usual, and remained there some time. About eight o'clock in the evening Udderzook appeared at the door of a farm-house situated at a distance of half a mile, and begged for a lamp, stating that the one which they had been using burned very badly, and afforded scarcely any light. This request having been complied with, he started to return, carrying the lamp and accompanied by a son of the family whom he had invited to go with him. They had proceeded but a short distance when their attention was attracted by a gleam

of light, and on the suggestion of Udderzook that the laboratory must be on fire, they started on a run. Arriving at the building they found it all in flames, a crowd of people assembled, and some engines from the city on hand and at work. It was soon evident that the building must be entirely destroyed, and then for the first time Udderzook made inquiries for his brother-in-law, and expressed the fear that he had perished in the conflagration. The thought that a fellow-creature might be endangered increased the exertions of the firemen, and in a short time the flames were beaten down sufficiently to allow the form of a man to be indistinctly seen amid the ruins. After several unsuccessful efforts, a hook was inserted in it, and it was dragged out smoking and burning. The flesh of the head was entirely consumed, as was the major part of the limbs; in fact, little but the skull, trunk, and a portion of one of the thighs, was left. At the coroner's inquest the next day, however, the remains were identified by Mrs. Goss, a brother, Alexander C. Goss, and by Udderzook, who also detailed the circumstances of his leaving his brother-in-law, and supposed that the lamp which they had used had suddenly exploded, setting fire to the building and burning or otherwise crippling Goss, so that he was unable to escape. The explanation was probable and satisfactory, the verdict was duly rendered, and the weeping widow and mourning friends followed to the grave, with all becoming religious ceremonial, what the coroner's jury had certified to be the mortal remains of Winfield Scott Goss.

The proofs of death were duly presented, everything appeared to be entirely regular, and the conspirators believed themselves to be certain of success. But there is always danger of overdoing a job of this character, and that was the error committed in the present instance. The two companies who had but just issued their policies for $10,000 each, were naturally annoyed at so large a loss occurring so speedily, and set to work to scrutinize all the facts in the case with the greatest care. The first discovery of importance was that Goss was utterly unable to carry so large an amount of insurance. His income was limited, and insufficient to cover his expenses; he was in debt to quite an extent, and had even

been obliged to borrow money to pay the first premiums on his new policies. It was therefore clear that he could not have intended to carry them long, and had obtained them only for some immediate object. This was sufficient to excite suspicion, and the unusual nature of the death added to it. The character of Udderzook was not altogether beyond question, and his conduct at the farm-house when he went to obtain the light excited the comment of the people there. It appears that he sat and conversed with them for some time before stating his object in coming, and, after he had mentioned it and obtained the light, he still lingered so long that they felt obliged to remind him of the comrade whom he had left in the dark, and to advise his speedy return. This apparently inexplicable delay seemed intended to allow the fire ample time to get well under way before he reappeared. Again, his apparent forgetfulness of his brother-in-law on his arrival at the scene of the disaster, and his neglect to make any inquiry for him until it was too late to make any effort to extricate him from his supposed position, tended to show that he did not wish to have the body drawn from the fire until it had been so far destroyed as to render any attempt at identification hopeless. In the endeavor to strengthen his case, he committed a blunder which injured it very seriously. A few days after the catastrophe, he produced the watch of Goss which he said he had discovered among the ruins, although these had been searched by hundreds of curiosity seekers, and nothing of importance found. This watch he swore that Goss had carried on the night of the fire, but while the heat had almost entirely consumed the body, the watch which was said to have been on it, was not melted nor even tarnished or injured in any way. Careful investigation also showed that on the afternoon of the fire, a man supposed and believed to be A. C. Goss, a brother of the insured, had hired a horse and wagon from a livery stable in the city, and had not returned with it until late in the evening. The theory adopted by all the companies, in view of the facts, was that a body had been procured from some poor house or cemetery and conveyed to the shanty, in the afternoon ; that Goss and Udderzook had together saturated the

corpse and building with coal-oil to ensure their destruction, that after the latter had gone for the light, the former had set fire to the house, and then jumping into the buggy held in readiness by his brother, driven to a small station near by, at which the evening train from Baltimore stopped, and proceeded in that to Philadelphia, while his brother returned with the buggy to the city, and Udderzook wept over the charred remains drawn from the fire. The companies therefore declined to pay the policies, and the widow promptly commenced suit against them.

So far the defense had only conjecture and suspicion to rely upon, and as it was certain that no favors could be expected from a jury, it was most important that positive evidence should be discovered. Photographs of Goss were freely distributed throughout this country and Canada, and every effort made to reach his hiding-place, but without success. He seemed to have disappeared from the face of the earth as completely as if he had really perished in the flames.

In the Spring of 1873, as the time of trial drew near, and it became evident that Goss could not be found, it occurred to the law officer of one of the companies that, in the absence of any distinctive marks on the buried remains, it might be worth while to examine the teeth. It had been noted that the insured had a remarkably perfect set, and several of the persons examined, in describing his personal appearance, had especially referred to their whiteness and regularity as being extremely noticeable. Personal interviews with over fifty dentists in Baltimore, Washington and Philadelphia, failed to show that any work had been done for him by any of them, and his wife and relatives were all certain that he had never been to a dentist, and never had any trouble with his teeth requiring attention. It remained to ascertain whether the corpse had been equally fortunate in an exemption from the ill which afflicts so much of humanity, and proper authority was obtained for its exhumation in the presence of competent witnesses. A moment's examination sufficed to show that the dental system of the deceased was an utter wreck, the condition of his mouth being such that his articulation

must have been affected, and that no one could have conversed with him in his life-time without observing the defect. Here, then, was proof positive that the remains found in the burned building were not those of Goss, and with this fact added to the conjectures already indicated in their possession the companies went confidently to trial in Baltimore.

All the circumstances of the case were brought out fully on that occasion, much more powerfully and plainly than I have stated them, and impressed upon the jury with all the eloquence and skill which learned counsel could bring to bear; the judge and all the hearers, except those it was important to convince, were thoroughly satisfied that a great fraud had been committed; but the jury brought in a verdict for the plaintiff on general principles. Of course a motion was at once made to set it aside, as being against the weight of evidence; and, pending the decision of that question, we may allow the curtain to fall on the first act of our drama.

It rises again to show us, some six weeks after the trial, a distant spot in Chester County, Pennsylvania. A farmer residing near a little clump of trees known as Baer's Woods was struck by noticing a large number of vultures hovering over them. Seeing from their manner that something unusual attracted them, he had the curiosity to visit the spot where they were congregating, and discovered to his horror that they were feasting upon a portion of a human body, the abdomen of which, thinly covered by a layer of earth and a few leaves, was protruding from the ground. The local coroner was at once summoned, with other neighbors, and a careful examination of the vicinity made. The fragment already uncovered by the vultures proved to be the trunk of a large, full-sized, well-developed man; at a little distance, where a recent disturbance of earth indicated that other discoveries might be made, were found buried the limbs; and a third hole contained the head and a bloody shirt. The remains were carefully carried to the neighboring village of Jennerville, and conjecture at once set to work to identify the victim and his murderer.

The latter was speedily indicated. Some days before, Wm. E. Udderzook, who had spent his boyhood there, and whose

mother still resided in the neighborhood, had arrived there with a friend whom he represented as the traveling agent of a Western firm, and then suffering from *delirium tremens*. The invalid kept himself carefully concealed from observation, while Udderzook made various visits in the neighborhood, and. among others, to another brother-in-law, one Samuel Rhodes, a farmer residing near Baer's Woods, to whom he broached a scheme of securing a large sum of money by making away with a man whom he represented as being already dead to the world and about whom no inquiries would ever be made. Rhodes having declined this easy method of acquiring wealth, Udderzook decided to execute his purpose alone. The next day between 1 and 2 o'clock in the afternoon, being July 1st, 1873, he hired a horse and buggy from a neighboring livery-stable, and with his companion drove away in the direction of Baer's Woods. Shortly before midnight he returned alone. and stated that his companion had taken the cars at a station near; and the next morning, after a visit to his mother, he himself returned to Baltimore. As he was well known in the neighborhood, his account of the stranger and his disappearance was entirely satisfactory ; but when the mutilated remains were discovered and recognized as those of his unknown companion, suspicion was at one excited, and he was arrested on the charge of murder. An examination of the buggy, the morning after its return to the stable, had shown the dash-board broken, and that the bottom of it had been washed out ; but a more careful scrutiny of it was made, in the light of later events, and on looking at the under side, it was found that a crack had allowed a few drops of blood to soak through, which still remained—most damning evidences of guilt. A seal ring was found in the bottom of it by a hostler, the morning after the fatal ride ; and this ring proved to be a most valuable clue.

The moment the arrest of Udderzook and the description of his unknown victim were published, the insuranee companies surmised that the mystery of Goss' disappearance might be near its solution at last, and several agents who had known him personally hastened to the scene. A glance at the remains, altered as they were, was sufficient, and ac-

quaintances and photographs brought from Baltimore, established beyond question the identity of the murdered companion of Udderzook with the experimenter on the York Road. The members of the family were too deeply committed to the other side to dare to acknowledge the truth, but no impartial witness hesitated for a moment.

To trace back the movements of the dead man, from his murder in the wood to his flight from the fire, proved a much easier task than had been the endeavor to trace them forward from his sudden disappearance. On that eventful night he actually went, as was conjectured, to Philadelphia where he registered himself as A. C. Wilson, a name which he retained throughout his wanderings. The next summer he spent at a farmer's in Pennsylvania, but his increasing love for liquor, fostered by his life of enforced idleness, made him an undesirable inmate in a quiet country home, and he was obliged to leave. He then went to the city of Newark, New Jersey, where he remained in a secluded boarding-house, while the detectives were vainly searching the country for him, until after the trial in Baltimore. There were three incidents which contributed mainly to his identification and which together were conclusive. Being, as already stated, a large man of striking presence, he had a peculiar manner of throwing his chest forward, which was very noticeable, and which he was unable to change, even when disguise of his identity became so necessary. Secondly appears a screw driver made with a ratchet, so that it could be used without removing the hand, a wooden model which Goss had invented and made, and which same model Wilson possessed and was equally fond of exhibiting and explaining. Thirdly, was the seal ring already mentioned, which had belonged to Goss, was constantly worn by Wilson, and was found in the bottom of the buggy the morning after the murder of the stranger by Udderzook, after the identification of the murdered man with Goss, the motives for the murder were easily conjectured. The importance of avoiding detection and recognition was so great that he did not dare to engage in any employment which would necessarily bring him in contact with other people, and his own taste for an idle life probably made him perfectly willing to be supported by other people. But this necessity for supporting him must have been a very

heavy drain upon the conspirators in Baltimore, who were none of them persons of means, and the risk which they ran, of losing all their venture, was greatly increased by Goss' growing habit of intemperance, for a dangerous secret which depends upon the discretion of a drunken man is a powder magazine which may explode at any moment. How indiscreet he was is shown by a conversation which he held with a fellow-boarder in Newark a few days before his departure in which he proposed, as a promising speculation, that he (Goss) should insure his life for $10,000, the other paying the premium ; that they should procure a small frame house, put a corpse in it, burn up house and corpse together, prove the loss, and divide the money which the company would pay, "and even if the company should refuse to pay," added he, "a jury would be sure to make them, for I have tried it." How many besides this poor victim of the avarice of himself and others, have been led into crime by the fatal tendency of juries to mulct corporations in favor of individual plaintiffs, without regard to law or justice, will probably never be known, but this one example shows how great a temptation that tendency affords.

It is probable that Goss expected some immediate result when the verdict was rendered in favor of the claim against the companies, and was much disappointed when he discovered that the law would interpose still further delays, before he could clutch the coveted money. He had become very tired of his quiet, secluded life, shut off from his wife, his family, and all his friends and associations, and it is not unreasonable to suppose that he may have threatened to abandon the whole thing and return openly to Baltimore. For after all he had committed no crime. He had absented himself for his own purposes, and if his relatives had taken advantage of his absence to pretend that he was dead and to contrive a swindle upon the insurance companies, that was their affair, not his, and he could easily make it appear that he had returned to confound their villainy as soon as he had learned of it. Their testimony in the trial had concluded them, and he was now in a position to command and threaten, when before he could only beg. They

appreciated the change of circumstances quite as well as he, and determined to send him abroad, where he would be less likely to be recognized, and where his indiscreet utterances would not be so dangerous. With this object in view, they raised about fifteen hundred dollars, with which amount Udderzook went to Newark toward the end of June. His influence over his weaker brother-in-law was unbounded; so marked, indeed, that even the careless observers in the little inn at Jannerville observed and commented on it, and he deliberately determined to use that influence to lead him to his destruction. He looked over all the case calmly; he saw, as he told Rhodes, that the man was already dead to the world, and would be missed by none but those whose own safety would not allow them to call attention to his disappearance, and with his actual death, all danger of discovery would be forever removed, and the money which they had raised with so much difficulty saved. Instead, therefore, of shipping Goss to Europe, he took him with him to Jennerville, and it is indicative of the calculating shrewdness of the man that he went to his own old home, where, as he knew, his arrival with a stranger, and the subsequent disappearance of the latter, would exeite no comment which would not be fully satisfied by any explanation he might choose to give. Using therefore, for the basest purpose, the child-like confidence which Goss reposed in him, he took him to the home of his own childhood, and having surveyed the ground and perfected his plans, invited him out for his final drive.

From all the circumstances it is probable that Udderzook threw his arm carelessly around Goss as they were riding slowly through Baer's Woods, and then suddenly tightening the grasp, so as to hold his victim's arms, plunged a knife into his throat. Goss thrust out his feet in the death agony with such force as to break the dash-board, but another blow followed instantly, and he had no time to resist before he lay helpless in his murderer's arms. The latter must then have dragged the body a short distance into the woods, washed out the buggy, driven it back to its owner, and then returned to his horrible task of dismembering and interring the evidence of his crime. A bright light was seen in the woods that night

doubtless caused by the fire which Udderzook built to burn the clothing of the murdered man, as some fragments of charred cloth and burned buttons were afterwards found there. On his visit to Rhodes the day before, when he had endeavored to pursuade the latter to assist him in the project which he had in mind, he was observed to notice a spade standing neglected against a barn, which spade was missing the morning after the murder ; he doubtless obtained it that night, intending to use it to bury the body, but failed to observe that the handle was broken half through, so that it must have flown in two at the first stroke he made with it. This defeated his purpose of digging a deep hole for the burial, but it was too late to make other arrangements then. The night was already far gone, the early summer sun would soon be up, and he must complete his terrible task before daybreak in the best fashion he might. He was compelled by the want of proper tools to hack the body in fragments and bury them separately in such shallow receptacles as he could scrape with the blade of the spade. The sun must have been up before he had finished his work, and he must have felt himself that it was unsatisfactorily done. But it could not be done again, and he theretore retreated to his mother's house, where he had some of his clothing washed, and thence to Baltimore to await the result.

The whole affair was ably planned, and would have been from his point of view, a complete success had it not been for his mistake in stealing a broken spade instead of a whole one. We doubt nowadays whether we should rightly call such a mistak an accident or providential interposition, but in all human probability had Udderzook been able to bury his victim so deep that the vultures could not reach him, the murder would never have been known, and the companies compelled to pay a fraudulent claim. But the shallow grave attracted the carrion birds, and their presence over it brought Udderzook to the scaffold, and saved the insurance companies from an infamous fraud.

I have mentioned only a few frauds which have been detected. How many have escaped detection is known only to Omniscience. But when we observe what comparatively

trivial accidents have led to discovery, it is only reasonable to infer that there may have been many others in which no such accident has occurred. We can only be certain that the thing which has been will be again, and that only the most watchful care and unceasing vigilance will enable the officers of insurance companies to protect the interests of the honest and deserving policy-holders from the rascality of designing knaves.

SCHOOL-ROOM POISONING

IN NEW YORK.

PROCEEDINGS OF THE SOCIETY, APRIL 5, 1876.

Report of Committee to confer with the School Authorities, with a view to such Legislation as may promote the Health of School Children.

The undersigned, a committee appointed to confer with the school authorities, with a view to such legislation as may promote the health of school children, report progress. They have addressed to the President of the Board of Education a letter, of which the following is a copy :

To WILLIAM WOOD, Esq., *President of the Board of Education, New York.*

DEAR SIR :—The undersigned having been appointed a committee under a resolution of the New York Medico-Legal Society, "to confer with the school authorities, with a view to such legislation as may promote the health of school children," beg leave respectfully to call your attention to some of the evils which seem to us to demand a remedy.

At the outset of our inquiries, our attention has been arrested by a report of the Committee on By-Laws, etc., of the Board of Education, under date of March 15, 1876, not yet adopted, and recommending a continuance, or at best only slight modifications of conditions which we are convinced are utterly inconsistent with due care for the preservation of the health of the children in the public schools.

We are gratified to observe in that report a full recognition of the unsanitary condition of the public schools generally, and the recognition of the power of the Board of Education to correct the evil and this encourages us the more in submitting for your consideration the following suggestions.

We first notice the conclusion of your committee in regard to the amount of air-space required, and the causes of overcrowding. "In fixing the sitting capacity of rooms, the following shall be a minimum allowance of floor surface and air-space per pupil. In the three lower grades of primary schools and departments, five square feet and seventy cubic feet; in the three higher grades, six square feet and eighty cubic feet; in the four lower grades of grammar schools, seven square feet and ninety cubic feet; in the four higher grades, nine square feet and one hundred cubic feet." (Rept. pp. 229–230.) "The principals of schools, zealous in their desire for a large number of pupils, and in their competition in this respect with neighboring schools, often also urged and harassed by the constant importunity of parents, have in many instances crowded their class-rooms, by admitting more pupils into them than their capacity would admit. This, of course, has been done by an exercise of their own authority, unlimited as it has been by any regulation, either of the Board of Education or of the Ward Trustees." (Rept. pp. 227–228.)

Such a capacity of school-room space, though confessedly greater than that which now is and hitherto has been allowed thousands of children in the public schools of New York, is not, so far as we have been able to learn, consistent with physiological law, or with the opinions upon this subject of those whose scientific judgment is entitled to deference and respect. Without dwelling upon the universally acknowledged importance of a pure atmosphere as the first condition of health, we may be permitted briefly to rehearse certain facts as the basis of our recommendation.

The atmosphere chiefly consists of a mixture of two gases, oxygen and nitrogen, in the proportion of one volume of the former to four of the latter. Oxygen is also called *vital* air, because upon it depends vital existence; it is the first ele-

ment of our bodily tissues, and, through respiration, affords fully three-quarters of our bodily nourishment throughout our lives, and is absolutely essential at every moment of our existence, to the healthy development and maintenance of our bodily organs ; the other fourth of our nourishment we obtain in the shape of ailment, which also in part consists of oxygen. The nitrogen of the atmosphere is neutral, deemed to be merely diluent of the oxygen. There is besides, in the free atmosphere, a third gas, *carbonic-acid*, or *fixed-air*, in the proportion of four volumes per 10,000. It is the same as that which miners call *choke-damp*, found in deep mines, shafts and wells, and in brewers' vats, so often first discovered by its fatal effects. But in the open air no one ever suffers on account of it, or for the want of an abundant supply of oxygen, the natural diffusion of these gases, when unrestrained, being always sufficient to maintain their due proportion.

The amount of air inspired and expired by a healthy person at every breath, is from twenty to thirty cubic inches half a cubic inch of which is absorbed. And this half cubic inch wholly consists of oxygen. As applied to the whole volume of the air breathed (oxygen being one-fifth only), every individual renders not less than five cubic feet of air unfit for respiration every hour, by the abstraction of oxygen alone ; but besides this, the half cubic inch of oxygen taken up at every breath is replaced by a relative amount of carbonic acid given out, so that the air respired *once only* contains of carbonic acid *one hundred times as much* as it did when it was inspired, or $5\frac{1}{2}$ per cent. of its volume. Nor is this all. Besides the surcharge of carbonic acid, and the absorption of oxygen, the air of closely filled rooms is still further contaminated by the exhalation of watery vapor, additional carbonic acid exhaled from the skin, and dead organic matter exhaled from both the lungs and the skin in varying quantities, but usually so abundant in the close, hot and dry atmosphere of our city school-rooms, as to be offensively apparent at all times, and a fruitful source of disease.

In regard to the deleterious effects of an excess of carbonic acid alone in the air we breathe, there is no difference of opinion among competent authorities. All agree that when

it reaches the prportion of 1 volume per 1,000, it is dangerous to health; if not immediately, none the less certainly in its cumulative effects. It creates a general indisposition of both body and mind, stunts bodily and mental development, and particularly predisposes to scrofula and consumption; and its excess in crowded apartments is usually an index of the presence of other deleterious agents due to the same cause.

But besides these, there are still other gases frightfully abundant in the school houses of New York, due to the emanations from latrines and privies. For example: Primary School No. 1. on Ludlow street, one of the *newest* and best arranged and appointed, besides being overcrowded and unventilated, is tainted throughout the halls, and at times by way of the fan-lights over the doors in the class-rooms, with the odors arising from the latrines in the basement, which are emptied only "once or twice a week." The seating capacity of this building is given as 1,700; actual register, 1,440; attendance, 1,329; square feet in 12 rooms, 3,264; cubic feet in the several class-rooms varying from 33 to 41 for each child! and on the day of our visit, March 27th, 50 children were absent on account of illness,—hotels and manufactories, established and conducted for private gain, are supplied with the necessary volume and flow of water to carry off promptly offensive and dangerous matters; and that the children in our public schools should be exposed to poisons generated by means of these foul and disgusting latrines, only to economize the water needed to keep well constructed water-closests in order, is simply inhuman, and ought to be at once amended.

The habit of wetting coal in bulk in the cellars, which is sometimes practiced, causes it to emit poisonous gases deleterious to health, and should be forbidden.

In addition to other and necessary modes of ventilation, the windows and doors of school-rooms should be left open a sufficient time after school hours to insure an entire renewal of the air in the rooms; otherwise, bad air is accumulated and retained in the building for the next day.

Lofty ceilings are regarded by some as a principal means

of insuring a sufficient measure in cubic feet for each person. Unless ventilation is secured for the upper portion of a room, a lofty ceiling only makes that portion of space above the tops of the windows a receptacle for foul air which accumulates and remains to vitiate the stratum below.

Children who have been ill with contagious diseases are allowed to return to school too soon. Upon inquiry of teachers, we learn that it is not uncommon for children to return to school in *two or three weeks* after scarlet fever or measles, and that there is no surveillance whatever in this regard for the protection of the schools against contagious diseases.

Remedial measures are scarcely less apparent than the necessity for them. No cubic space, large or small, can be made to take the place of sound principles of construction, the necessary admission of fresh air, the escape of foul air, and a sufficiency of light falling at the proper angle upon both the book and the eye, or the necessity and benefits of intelligent sanitary supervision.

We would recommend that constant, thorough, scientific survey and sanitary inspection and supervision be permanently provided for. The nature of the questions, and the vital and paramount interests involved, ought to insure this measure without argument.

We have observed with pleasure that you have recommended that the minimum age of admission to the schools be raised to six years. We believe eight would be still better ; but we regard confinement and labor in school, in constrained positions, and breathing bad air, at the tender age of less than six years, as being destructive to both the physical and mental powers, and in every aspect of it, wholly inexcusable.

For the same reasons that we would recommend six years as the minimum age, we would make *three* hours the maximum daily attendance upon the primary department and schools.

In fixing the "sitting capacity," it should be borne in mind that the smaller the allowance the greater the necessity for the constant admission and change of air. If an individual

be confined in a room containing 1,000 cubic feet, in twenty-four hours such a room would contain one part of carbonic acid to every 100 parts of air, besides the amount given off by the skin, and would be deadly.

If the cubic space be small, the means for change of air must be large in the inverse ratio. Thus, the space of 100 cubic feet, in order to maintain the air at a healthy standard it must be changed thirty times an hour, which is not practicable without exposing the inmates of the room to dangerous currents.

The minimum cubic space in which the standard of atmospheric purity may be maintained without perceptible draught has been found, by actual experiment with the most perfect mechanical appliances hitherto devised, to be 424. This amount of space will admit of renewal six times an hour without appreciable draught.

Taking this as the lowest standard, and accepting the concurring opinions of all credible authorities, that with *the best practical means of ventilation* the margin for contingencies should be, at the least, equal in area to the demonstrated actual necessities, and we have upwards of 800 cubic feet as the lowest standard of allowance for twenty-four hours.

We would therefore recommend an adaptation of this amount to school hours. Every individual actually poisons fifteen cubic feet of air every hour. To prevent this, thirty cubic feet, at the least, should be provided hourly, which proportion, for five hours daily school session, requires 150 cubic feet as the smallest space compatable with efficient ventilation without dangerous exposure to draughts.

The difficulties attending a radical reform in the sanitary management of the public schools is fully appreciated. The vast numbers to be provided for, the urgency of parents, the ambition of principals and teachers, the lack of sufficient room, the immense cost of new buildings, and the faulty structure of existing ones, have all been borne in mind.

But if all that is desirable cannot be accomplished now, at least a part may be ; and the extreme importance of the subject has impressed us with the duty of stating facts and correct principles plainly and fully.

Relying upon this, and upon your own well-known devotion to the public schools, as being at once our apology and our hope for your active co-operation,

We are very respectfully,

Your obedient servants,

GEO. H. YEAMAN, R. J. O'SULLIVAN, M.D.
A. N. BELL, M.D., R. S. GUERNSEY,
D. S. RIDDLE.

New York, April 4, 1876.

The report was adopted as the sense of the Society, and the committee continued.

PROCEEDINGS OF THE SOCIETY, JANUARY 3, 1877.

James Appleton Morgan, Esq., said he had listened to the discussion of the subject under consideration with a good deal of interest. At the time the discussion was first presented, a member of the Committee called upon him and asked him to join in it. He doubted whether the scope of his experience would add anything to the general stock of accumulated knowledge on the subject; but the gentleman suggested that he (Mr. M.) make it his duty to confine his remarks to the Compulsory Education Act, and it did seem to him but just, that if the children were compelled to go to school, they ought, at least, to have decent places to go to. Until recently he was under the impression, as probably many others are, that if parents did not send their children to school the police took them there. That is not the case. The Superintendent of Truancy, Mr. Stanton, has kindly given us a set of papers, which I have brought with me, which will illustrate the method of procedure. I may say, that when I went into Mr. Stanton's office, I expected to find a pamphlet or so on the subject; but I not only found a pamphlet, but a whole literature, so that I was fairly staggered with the amount; but, as I before remarked, I provided myself with a set of blanks, as in use by the Board of Education.

The first paper is something to this effect :

Office of the Superintendent of Truancy, Hall of Board of Education,
No 146 *Grand Street, New York*.....18....

You are hereby notified that your child.....aged .... has not attended school for the period of fourteen weeks during the present year, as required by statute (Chapter 421 of the Laws of 1874, as amended by Chapter 372 of the Laws of 1876).

Yours, etc.,

.....Supt. of Truancy.

There is also a second blank, which is sent to the employer :

Office of the Superintendent of Truancy, Hall of Board of Education,
No. 146 *Grand Street, New York*,.....18....

You are hereby notified that you have in your employ, contrary to the Statutes (Chapter 421, of the Laws of 1874, as amended by Chapter 372, of the Laws of 1876).....a child between the ages of eight and fourteen years, who has not attended school for fourteen weeks during the year next preceding that in which he has been in your employ, and further, that you will, if you continue so to employ said..... subject yourself to a penalty of $50 for such offence.

Yours, etc.,

.....Supt. of Truancy.

Upon the receipt of these requisitions, the employer or parent is supposed to comply with the law. If he does not, the Superintendent of Truancy takes cognizance of the matter, and makes an affidavit about as follows :

The People of the State of New York, on complaint of.....vs. .....City and County of New York, ss..... residing at No.....Street, in the City of New York, being duly sworn, says, That he is an Agent of Truancy, duly appointed under the provision of an Act entitled, "An Act to secure to Children the benefits of an Elementary Education," passed May 11th, 1874.

That..... is a child between the ages of 8 and 14 years, viz : of the age of ..... years ; that said..... is a child whose attendance at school deponent has been and is unable to procure by persuasion, argument or any means other than force, and who said deponent has found wandering about the streets and public places of said city during the school hours of the school day of the term of the Public Schools of said city, located in the district in which said.....resides. That said.....has no lawful occupation, and, as deponent verily believes, is grow ng up in ignorance, and said.....is a

proper subject for arrest, and incarceration under the provisions of said Act aforesaid.

Wherefore said deponent prays that said.....be apprehended and dealt with as the law may direct.

Sworn to before me this....day }
of.....187.. }

And if the child is not sent then, a fourth paper, which is an ordinary commitment, is made out, when the child is taken not to the school, but to Randall's Island.

Commitment. Police Court,.....District.

STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK, ss. By.....Esq., Police Justice for preserving the Peace in the City and County of New York: to the Policemen of said City or any one of them, and to the..... These are in the name of the People of the State of New York, to command you, the said Policemen, or any one of you, to take and convey to the said.....the body of.....who being charged before me on the oath of.....an Agent of Truancy in said city, with being.....found wandering about the streets and public places of said city, in violation of the Act of the Legislature of the State of New York, entitled, "An Act to secure to Children the benefits of an Elementary Education," passed May 11th, 1874.

I caused the said..... to be brought before me for examination on said charge, and I proceeded to inquire into the matter in his presence, and having read the proofs and allegations submitted to me, and duly considered the said matter.....was convicted on competent testimony aforesaid, of being..... And I having been satisfied by sufficient proof that the said.....is a child between the ages of eight and fourteen years, and is of the age of..... years.....was adjudged by me to be a proper object to be committed to the..... Now, therefore, you the said..... are hereby commanded to receive the said.....who is hereby committed by me to your care on said.....there to be restrained and detained and sent to school for such time and in such manner as may be designated by the Board of Education of the said City of New York, or until .....shall be discharged according to law.

Given under my hand and seal at the.....District Police Court, in said City of New York, the..... day of..... in the year of our Lord, One Thousand Eight Hundred and Seventy.....

..... Police Justice.

The pamphlets which he had been able to procure are full of interesting matter, but so voluminous that he did not feel justified in attempting even a summary of their contents.

A difference of opinion exists among members of the Board of Education as to the value and efficacy of the measure, which has now been some time in operation. The chief objection put forward is that it is unwise and leads to no good results to treat as criminals young boys and girls addicted to truancy, and that to throw them into prison, even for the shortest space of time, casts a stain and reproach upon them out of all proportion to the trivial offence laid to their charge. Other means of correction and reform, it is urged, can be employed without inflicting a degradation, and subjecting him or her to the pernicious influence of contact with wicked and depraved characters that may lead to the utter ruin of the child. To place a child in a common prison for mere absence from school is claimed to be outrageous. To obviate this difficulty it has been suggested that a building be provided specially for the confinement of truants, but even this plan is not favorably considered ; and it now remains a question, whether or not the enforcement of the law may be made the means of any important service to our system of education or extensive benefit to the community.

The truant agents, under the direction of the superintendent of Truancy, have been active in the work of investigating the causes of the absence of all pupils between the ages of eight and fourteen, who have been reported by the principals as truants, or whose absence was protracted or not accounted for. In this manner many children absent from school without the knowledge of their parents have been returned to the schools, and by this means not only has the attendance of pupils been somewhat increased, but the amount of truancy diminished, since other children have been deterred from playing truant by the greater certainty of detection, as well as in some cases by the fear of being sent to the House of Refuge, of which are confined youths transferred from State prisons as incorrigible. The City Superintendent is of opinion that no other effect than this has been produced by the enforcement of the law, except, perhaps, an indirect influence upon the minds of parents and guardians to send their children to the schools with greater frequency and regularity; but adds that it is but fair to attribute a part of the

increase of attendance and diminution of absenteeism to the operation, direct or indirect, of the law.

The subject will continue to occupy the attention of the Board of Education, and it is expected that the Legislature now in session will be asked to modify, if not repeal, the provisions of the act that authorize the arrest and commitment of truant children to institutions that largely partake of a penal character.

The idea of compulsory education is not at all new. The speaker has been very much interested to find that, in the year, 1642, the first law for compulsory education in this country originated in the then commonwealth of Massachusetts.

It is as follows :

Extract from the Laws of the Colony of Massachusetts Bay, 1642.

"Forasmuch as the good education of children is of singular behoof and benefit to any commonwealth, and whereas many parents and masters are too indulgent and negligent of their duty in this kind, it is therefore ordered by this court and the authority thereof :

"That the selectmen of every town, in the several precincts and quarters where they dwell, shall have a vigilent eye over their brethren and neighbors, to see—First, that none of them shall suffer so much barbarism in any of their families as not to endeavor to teach, by themselves or others, their children and apprentices so much learning as may enable them perfectly to read the English tongue and knowledge of the capital laws, upon a penalty of twenty shillings for each neglect therein ; and further, that all masters do breed and bring up their children and apprentices in some honest, lawful calling, labor or employment, either in husbandry or some other trade profitable for themselves and the commonwealth. If they will not nor cannot train them up in learning to fit them for higher employments, and if any of the selectmen, after admonition by them given to such masters of families, shall find them still negligent of their duty in the particulars aforementioned, whereby children and servants become rude, stubborn and unruly, the said selectmen, with the help of two magistrates, shall take such children or apprentices from them, and place them with some masters for years—the boys till they come to twenty-one and girls eighteen—years of age complete, which will more strictly look into and force them to submit unto government, according to the rules of this order, if by fair means and by former instructions they will not be drawn into it."

Mr. Wm. A. Owen, Principal of the Eighty-Seventh Street School, New York City, on being called upon by the Chairman, expressed his gratification with the interest the Society had taken in the subject, and said :

I know something of the working of the school system under the Board of Education, having been engaged in the Public Schools of this city for the past twenty years.

1. We need such a law ; but we need something else before we can put that law into active operation—*i. e.*, more school accommodation. There are no schools except those in the upper part of the 12th Ward, the 23d and 24th Wards, that are not now overcrowded. Yet this law says that every child between eight and fourteen must attend school at least fourteen weeks each year.

The primaries never have been large enough. The question comes up, How can we get room in this city, where land is so high ?

Our school building should go from street to street. A large building will accommodate a large number of pupils. This will secure a well graded school, and therefore a successful school.

2 I have the pleasure of being acquainted with one of your members, Dr. O'Sullivan, who for two years occupied that position in our schools, and I know its value. We have now 204 departments and primary schools. In the last year we had 202 school days. This would not admit of a visit from a single medical inspector for all the schools of more than one visit a year, which would not do much good. Dr. O'Sullivan made more frequent visits. We should have, therefore, a medical inspector for each district, and he would find work enough to do.

With all due deference to what has been said here, I would not have a child go to school until he or she is eight years old ; but we should have for the poorer classes another building not called a school, but a nursery—a place to develop the physique, where the children could take their playthings and be cared for, the mother knowing that while she is out earning bread her child is safe and happy. To these buildings I would admit children between four and eight years of age.

I think I am right in saying that a large portion of our leading merchants and business men were formerly boys from the country. Why is it that they so often outstrip our

city boys? Is it not that they are not afraid to work, and are unable to bring to their work strong and well-developed bodies? What we want to do for our city children is to develope their physical powers.

I would not have a child touch a book to study after three o'clock, except in the two highest classes. Our boys and girls do not have enough time to play. By the rules of the Board of Education we must not give the children lessons to learn out of school—that will take over two hours study. This means the average child. I claim that five hours' teaching is enough for a teacher each day. A child should not be required to do more until he has reached the 1st or 2d grade. Up to that time, don't ask him to give more than one-quarter of the twenty-four hours to school.

This can only be done by obtaining additional school-room accommodation.

The 1st, 2d, 3d, 4th grades in Grammar Schools are allowed nine square feet per pupil—the 5th, 6th, 7th, 8th grades are allowed seven square feet of floor space per pupil

We often find large boys in the lower grades.

Large class-rooms, with plenty of sun-light and ventilation, will remove most of the trouble. Your Committee speak of the assembling rooms in our schools as valuable space not utilized, because only used a few hours each week.

A large assembling room is one of the great needs of our public school, and the few hours per week it is used tell favorably on the drill and discipline of the school.

A school that has not an assembling room sufficiently large to assemble the whole school is very seriously crippled in its discipline and efficiency.

Dr. Garish said: It is obligatory upon us that we should demand the enactment of a law to the effect that every child should be supplied with a given space in these schools to breathe in, and not allow any boy to enter the school without this given space is allowed him. We would then be in position to place our children in a better physical condition than at present. It would indeed be well if a law was enacted making it obligatory to educate the men whose duty it is to

make the laws. Schools should be placed in more healthy localities, where the fresh air can reach them, where no deadly effluviæ rise from the ground. He had always advocated the appointment of Medical Superintendents in all the schools. It should be so arranged that an inspector should visit every school every day, to look after the physical condition of these children; and if possible children should be followed outside of their schools into their homes, and parents should be advised respecting sanitary laws. They should be placed in apartments where they can breathe pure air. If I could have my wish, he continued, I would have attached to every school a gymnasium. Let us give our children good physiques. We cannot expect to have a sound mind unless it be engrafted on a sound body; we are doing too much brain work in America, and I am happy to see that we are getting more into the idea of giving ourselves a little more rest and recreation. We are beginning to appreciate it, and to imitate in this regard our German citizens. I delight to look forward to the time when there will be more holidays among us. They are a sanitary necessity and should be encouraged.

Judge Fithian, on being called upon by the Chairman, remarked that it seemed to be apparent to every gentleman and to every citizen, that you have on hand here a question of the very greatest moment—the welfare of our city, and, indeed, the welfare of all the cities of this country. You, gentlemen, are grappling with a branch of that great social problem which has forced itself every year more and more upon the attention of a cultured and thoughtful people; and that is, how and in what manner shall you be able to manage the great populace aggregated in your great city, in such a way that this population shall not deteriorate, and the city not become a nest of vice and crime and moral turpitude; but how control, shape and manage it so as to retain the maximum amount of culture and education and keep down the lowest minimum amount of vice, ignorance and crime that yearly occur in our great city; and how it is to be managed—whether you are to give it up to the men and women with sound minds in sound bodies, with good moral and mental culture, or the opposite—these are propositions that certainly

are tasking the consideration of the able and intelligent, and benevolent men and women of the age, and finally I can add no more than to say that I bid you God speed, and shall be happy to do anything that I can in my humble way to assist you in a cause so loyal.

Dr. Robert R. McIlvaine said he wished to ascertain from Dr. Agnew what are his data for the condition of the eyes of the children of schools? Where does he begin, and what length of time have they been deteriorating? I wish to know what is the proportion between the whole number of blind to the whole population at home; and how does that ratio compare with the same population of unfortunates on continental Europe and in the islands around it?

Dr. Agnew. I do not know.

Dr. McIlvaine. Now, the Common School is the first product of the Reformation first inaugurated by Luther, in Saxony, with the assistence of Melancthon, in 1525, and it went into operation, I believe, in 1527. If this use of the eye causes deterioration, then the Saxon people would be by this time in a helpless condition, because during the last 350 years they have been using means to promote blindness.

Is it a fact that the use of organs is destructive to them? Is it not rather strengthening to them? Is it not a physiological fact, that the use of all our organs is a means of fortifying them against harm, and of preparing them for usefulness? Has it been demonstrated that myopia—or near-sightedness, as it is called—is a progressive infirmity? Mr President, I want to know your experience.

The Chair here answered that the *abuse* of the eye causes the disease referred to.

Dr. McIlvaine. Excuse me, Mr. President, that is a new departure; we are not speaking of that. To begin with the last data in my possession: in England and Wales, in the year 1851, there was one blind person to every 979; in Ireland one to every 878; in Scotland, one to every 960, making a common ratio of one in every 950. In Belgium the proportion of blind to the other population is one in every 1,316; in France, one in 1,357; in the lower parts of Germany, one

in 950; Prussia, one in evary 1,401; Saxony, on in 1,666; Switzerland, one in 1,570; in Sweden, one in 1,091.

Let us now return home. The population in 1850 of blind, of deaf, of dumb, of insane, of idiotic, in the United States, numbered 50,994—being one blind person in every 2,368; in 1860, one in 2,519—and this is what our experts designate progressive blindness, Mr. President. I am happy to say that these facts have been so. I may add, in the language of the psalmist: "God hath not dealt so with any other nation." We have fewer persons suffering from this infirmity than any other people of whom we have published records. We cannot presume on this matter, nor be deluded by the mere declaration of experts. This is too serious and important a subject. If the schools are preparing a population of the unfortunate blind people, why, it is one of the greatest calamities that can possibly befall the race, and would imply a deterioration of the race in common. But I am happy to say we have data to the contrary. It will be remembered that in the State of New York, in 1860, among the white people, one in every 2,327 was 90 years of age, and one in every 41,647 was 100. You remember I am speaking of the Caucasian race. The data, as to the eyes and longevity, is applied wholly and particularly to the white people. We must not allow ourselves to be led into error by declarations unsupported by demonstration While giving these gentlemen credit for their industry, we want to have data by which, as a touch-stone, to refer these circumstances to. This, I regret to say, has not been the case; we have here an accumulation of data, without any landmarks whereby to ascertain whether we are deteriorating or whether we are improving.

In relation to the report of the Committee, there was a reference made to the unsanitary results produced by the contact of water with coal in the cellar in bulk. Now, gentlemen, we know what water is composed of: oxygen 8, hydrogen 1—making 9, while the coal that is generally used, I believe, is composed of carbon 75.28 (what is called coke coal), hydrogen 4.18, nitrogen 15.96 and oxygen 4.58. Now, cannel coal is composed, according to analysis, of carbon 64.72, hydrogen 21.56, nitrogen 13.72. So that you see there

are none of those elements that are in themselves or as far as we can see brought in contact, which are capable of producing what are called poisonous effluviæ or poisonous products.

In 1872, on my way to Paris, I was, while in London, asked by a gentleman to listen to a lecturer on sanitary science. Being presented to the lecturer, after the close of his discourse, I observed to him that one thing he had either forgotten or overlooked. I referred to the location of a house; that a house placed east and west had the sun only one-half of the day, whereas a house placed north and south had the sun in the forenoon and in the afternoon—the east side in the forenoon and the west side in the afternoon.

There is something in understanding how to place a house in order to have it placed in a sanitary condition, and there are but few who appear to appreciate it.

In speaking to a gentleman who called himself a sanitarian, the other day, concerning this matter, he said it was a mere whim—it was immaterial how a house was placed. Now the parties who had charge of the building of the Women's Hospital, as it is called, and the parties who had charge of the Presbyterian Hospital, did not know how to use the ground. I speak of this because I have seen the house externally. The St. Luke's Hospital might have been arranged so that the sun would have penetrated every department, as they had the whole lot under their control. It therefore would appear that there are to be taken into account several considerations in building a house.

1. In the location of the house, in regard to the sun, which is never to be dispensed with, if we possibly can control the ground on which we build. 2. A building should be so constructed that every department of it shall be the recipient of this great luminary, which is itself life-giving and life-preserving.

He made no answer. He stated that it was difficult sometimes in the city. I told him that was true; but where you can control land the sunlight should never be dispensed with.

Dr. Morreau Morris, having been invited to address the

Society, said that he had been unfortunate enough not to be present when the Report of the Committee was read. He had had some experience in the study of the sanitary condition of the schools when he was a sanitary inspector.

It is now about nine years since he was a sanitary inspector in the Metropolitan Board of Health. His duties led him to visit the school-houses, and in so doing he made some investigations in reference to their sanitary condition and their effects on school children. It seemed to him that the crowding was such as to be very detrimental to the health of the children. There was also a great want of ventilation. The ventilating appliances were so deficient, that they were obliged to open the doors and windows, and the air blew upon the heads of the children in the room—this condition he noticed at once, and so reported the facts to the Board of Health. He was immediately informed that it would not be well to make any more inspections of school-houses. He was treading upon the toes of another Commission. If there was anything to be done, it was better that the Commission should be notified that it ought to be done.

As to the enactment of some law covering the difficulty referred to, he would say that we have plenty of law—too much, in fact. The trouble is, that there is no enforcement of the law. The Metropolitan Board of Health gives ample power to the Health Department to supervise all the schools or any other building in the city of New York within its jurisdiction ; to supervise and recommend and order or compel the execution of whatever it thinks necessary to be done. *It seemed to him that this was a point which should never be lost sight of, even by this Society, in whatever course it may take.* There is law enough, and law directly to the point; and the only difficulty is in the gentlemen who are at the head of that Department, in not having the law executed. He was aware that there is a timidity about executing a law, especially when it comes in contact with another Department of the same city government, yet it seemed to him that sanitary questions are those questions which relate to life and health, and should be executed by the power to whom it has been delegated—no matter with whatever Department it may

clash! Now overcrowding of the schools is one of the great evils which exist in the public school-houses of the city. Children are sent there not only because the law compels them to be sent, but also from a natural desire on the part of the parents to have them educated. But there is also another reason for the overcrowding, which you perhaps recognize at once, and that is the desire, nay, almost the necessity among the poorer classes of the laboring population, to have their children taken care of while they go out to earn their bread and butter; therefore they will send them to the school which is nearest. He agreed with the Principal of the Eighty-seventh Street School, that there should be other means provided for this class. The suggestion of a nursery was a good one. He had not only seen schools where there was not only wet coal in the cellar, but where urinals were allowed to overflow, and the children allowed to play in the basement. This state of things would not be allowed in your own dwellings. The practice is one of the most detrimental things done in the schools. If the children should be allowed to run over the rocks with the goats, they would do better than if they were allowed to play in the cellar.

PROF. HAMILTON asked whether he understood Dr. Morris to say that the Board of Health had power to authorize inspection of school-houses, and whether they had power to enforce any suggestions in that regard which may be made by proper persons?

DR. MORRIS said they had.

PROF. HAMILTON asked whether such reports were ever sent to the Board of Education from the Board of Health?

DR. MORRIS replied that such reports had been sent.

PROF. HAMILTON asked, further, what became of such reports?

DR. MORRIS believed that they were pigeon-holed.

PROF. HAMILTON: Ah! Were these inspections made within the last two years?

Dr. Morris said he could not answer as to two years; he thought they had been within four years.

Prof. Hamilton inferred that they had ceased to make inspections because their suggestions were not followed.

Dr. Morris said that was one of the points he wished to make.

WM. G. DAVIES.

William G. Davies, Esq.

Was born on the 21st day of March, 1842, in the City of New York, and is a son of the late Judge Henry E. Davies. He graduated at Trinity College, Hartford, Conn., in 1860, and went abroad to pursue his studies, entering the University at Leipsig, Germany, where he remained one year.

On his return to New York he entered the office of Slosson, Hutchins & Platt, and was, at the same time, a diligent student at the Columbia College Law School, his determination being to acquire a thorough legal education, as a solid basis on which to build his hopes of future eminence. He was admitted to the Bar in 1863, and formed a partnership with Henry H. Anderson, Esq., which was dissolved when he entered the service of the Mutual Life, August 1, 1866. In May, 1870, the Law Department of this great company was organized, with the late Hon. John V. L. Pruyn as solicitor, and Mr. Davies as assistant. This position he held until the 20th of May, 1885, when he was elected head of the department, succeeding the late Hon. Oliver H. Palmer.

Mr. William G. Davies is a ripe scholar and an elegant writer. He contributed a paper entitled, "On Mysterious Disappearances and Presumptions of Death in Insurance Cases," which was read before the Medico-Legal Society of New York in 1876, is published in the 3d volume of Medico-Legal papers, and was widely read and copied after its delivery. Mr. Davies takes great interest in forensic medicine. Since he united with the Society, he has taken great interest in its success, and has held the position of Trustee for several years, and is now Chairman of the Board of Trustees of the Society, and also of the Executive Committee.

Mr. Davies is a rising member of the New York Bar, and an influential member of the Medico-Legal Society.

C. B.

CERTAIN

RAILWAY INJURIES OF THE SPINE,

IN THEIR

MEDICO-LEGAL RELATIONS.

By WILLIAM A. HAMMOND. M. D.,

Professor of Diseases of the Mind and Nervous System in the University of New York, etc.

Is there a class of injuries of the spine produced by railway accidents, the symptoms of which are entirely subjective? In other words, are there any spinal affections caused by collisions and other mischances which are evident only to the alleged sufferer, and which cannot be detected by the most careful examination on the part of the physician or surgeon? If there were not at times extraordinary motives for simulating such diseases, the question would not probably have to be asked. But with soldiers and sailors, prisoners, members of beneficial societies, school children and railway passengers, a motive for deception often exists, and hence in the interest of justice to the plaintiff and defendant in suits for damages the subject is one of great importance, to say nothing of its scientific relations.

For instance, a patient comes to his physician and says he has a pain in his back. He walks in a bent position, he

Read before the New York Medico-Legal Society, May 3d, 1876, Prof. F. H. Hamilton, President, in the Chair.

shrinks when pressure is made on the alleged seat of pain in the spine, his face wears an expression of weariness or suffering, his urin dribbles from him or is retained till drawn off by the catheter. Some of these symptoms are subjective, others are objective ; but there is not a single one of these latter which cannot be assumed, and of all the phenomena exhibited by the patient, every one may be a counterfeit.

Now if the individual apparently suffering from this combination of symptoms has no obvious motive for deception, we take all his statements with full faith in their correctness, and do not stop to ascertain whether or not he is endeavoring to impose upon us by shamming lameness, or incontinence or retention of urine. In fact, if there be no incentive to fraud there is every reason why he should not attempt to impose on a medical practitioner. But if he has recently been a passenger on a railway train when an accident occurred by which he received a concussion or shock, and we are aware that he has instituted, or is contemplating instituting a suit for damages in a large sum of money against the company, we should be derelict in our duty if we did not test by every means in our power the truth of his statements and the reality of the obscure phenomena ; and if we did, the probability of arriving at absolute correctness would be very slight, unless we had repeated opportunities of observation, for a painful expresssion of countenance may be assumed, a bent position of the body and lameness are easily counterfeited, and even incontinence and retention of urine may be voluntary.

Or the case may be much milder and still sufficiently severe to cause great inconvenience and suffering. A few years ago I was consulted at the instanee of my friend, Dr. J. Marion Sims, by a young lady who had for several months suffered acutely with a pain in the lower part of the spine, which was apparently directly the result of a fall on the ice, by which the end of the vertebral column was brought into violent and sudden contact with the hard, frozen surface of the ground. For a moment she was stunned, and was unable to walk or even to stand, but in a short time, not exceeding half an hour, she walked a few steps to a carriage, and on reaching

home at once went to bed. The following day she could walk, though with some little difficulty, but there was a constant pain experienced in the lower dorsal region which was aggravated on movement of the body. This pain, when I saw her several months afterwards, had not left her for a moment during the time she was awake. It was of a dull aching character, and was always increased by fatigue. Indeed, very slight muscular exertion, such as walking a few hundred yards, or playing a game of croquet, was sufficient to render it exceedingly distressing. Beyond this there was nothing. There was no paralysis, no anæsthesia or hyperæthesia of the limbs, menstruation was regular, digestion was not interfered with, sleep was natural, and she looked the very picture of health. Here there was no apparent reason for questioning the patient's veracity ; her statements were accepted by her physicians, and she was placed under such treatment as appeared to be indicated. But suppose for the moment that she had complained of the pain immediately after having been subjected to the shock of a railway accident, how different would have been the views of those medical gentlemen who might, in her and the company's interests, have subjected her to examination. One set of physicians, believing her assertions of the existence of a continual pain in the spine, would have testified to spinal injury, while the other, discrediting her allegations, would have seen only an attempt to defraud a corporation.

Again there are cases in which there is undeniable injury, the effects of which are at first very clearly manifested by subjective and objective symptoms, but in which subsequently there may be reason for believing in the fact of complete recovery, but in which, nevertheless, the patient continues to complain of pain and to show motorial derangement. It is certainly true that where there is no motive for deception, very severe symptoms are speedily recovered from.

Thus Ashurst* cites the case of a male child two years of age, who was admitted into the Pennsylvania Hospital, No-

* Injuries of the Spine, etc., Philadelphia, 1867, p. 8.

vember 13th, 1861, having a short time previously received a severe blow upon the back. There were no external marks of injury, but the lower limbs were paralyzed, doubling up upon themselves when an effort was made to place the child in an erect position. He was discharged, cured, after two months, his treatment having consisted in little else than rest in a recumbent posture.

A case has recently come under my observation, in which the patient, a stout man of thirty years of age, fell backward from the side of a staircase which was without a railing, and struck his back against a box some ten feet below. There was complete paralysis both of motion and of sensibility in the lower extremities ; the bladder was paralyzed, as was also its sphincter, and there was severe pain at the lower dorsal and upper lumbar region of the vertebral column. These symptoms were present from the very first, and continued with their initial severity for several weeks; amendment then began, and after the lapse of about four months, the patient was apparently as well as he ever had been.

My own case is to the same effect. In going down a staircase at Nashville, in the winter of 1864, I knocked my head against a beam and fell, striking my back against the edge of the stairs several times as I went to the bottom of the flight. I was unable to rise, in fact, was completely paralyzed, both as regarded motion and sensibility, and was carried up stairs on a stretcher and laid on a bed. For a few hours there was paralysis of the bladder, but power was regained before night. The lower extremities remained incapable of any motion for seven days ; on the eighth day muscular power began to reappear in the flexors of the toes, and steadily advanced, but it was over four months before I was able to walk without crutches, and several more before recovery was complete. During the first month the electric contractility of the paralyzed muscles was markedly diminished.

Again there are cases of spinal injury in which the symptoms do not ensue immediately, but they are developed at some subsequent period. Several such are cited by Erichsen,* in his recently published work, and quite a number

* On Concussion of the Spine, Nervous Shock and other Obscure Injuries of the Nervous System, London, 1875.

have come under my own observation. Some very interesting instances of the kind are detailed by Leudet,* in all of which recovery took place. This last is not, however, as we will hereafter show, by any means an invariable result of Leudet's cases; the following are especially interesting:

M., a man in good health, jumped from the quay to the deck of a ship, a height of about twelve feet, and at once experienced a sharp pain in the sacro-lumbar region. He, however, continued to work. The morning after the accident he still felt the pain in the back, and besides, experienced a gradually increasing degree of weakness in both legs. He was nevertheless able to walk, though with difficulty; but throughout the whole time had no numbness or pain in the limbs. The power of motion however, soon began to reappear, and on the eighth day he was discharged from the hospital, entirely restored.

R., 34 years of age, while engaged in unloading a vessel, fell to the ground from a wagon, a distance of about a metre, striking on the hands and feet. He arose without assistance, and felt no inconvenience except a tingling in the right knee. He walked some 20 feet and lay down on rather damp ground, where he remained for less than half an hour. He then, feeling no pain, rose to the sitting posture, then stood erect; but on attempting to walk, found that he could not, on account of the weakness of both legs; supported by two men he managed to reach his home. During the night his legs became so weak that he was unable to turn in bed, and on awaking in the morning he found the arms also measurably deprived of power. There were neither urinary or rectal troubles. The paralysis continued to increase for several days, then at the end of two weeks there was marked amelioration; but it was not until nearly three months had elapsed that he was discharged from the hospital, cured. It is an important feature of this case that there was no direct violence inflicted on the spine, the patient, as we have seen, falling on his hands and feet.

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* Recherches Cliniques esu la Congestion de la moelle a la suite de chutes ou d'efforts. *Cliniques Medicale*, Paris, 1874, p. 384.

Mr. LeGros Clark,* calls attention to the fact that a blow on the back sufficient to produce concussion of the cord is not always immediately followed by spinal symptoms. Thus a man who subsequently came under his observation was knocked down by a severe blow with the fist in the upper dorsal region. There was considerable shock produced and in some thirty-six hours afterwards he began to complain of pain extending downwards from the point where he was struck, and partial paralysis of both arms gradually supervened, attended by diminished sensibility. The lower extremities retained their natural state—a very unusual circumstance, and one in regard to which I think there must be some mistake.

In another case a young sailor was thrown violently down by catching hold of the revolving wheel of a carriage which violently struck him. When brought to the hospital he made light of his injury, and complained only of a little tenderness on percussion over the upper dorsal region. His breathing was peculiar—a long inspiration followed by a rapid expiration. He soon afterwards vomited, and during the night had a succession of epileptiform fits, attended by violent tetantiform spasms and unconsciousness. In a few days he was quite well, and was discharged from the hospital

Of my own cases the following are interesting, as showing both how severe an injury may be recovered from, and how slight a one may produce great disturbance without there being at first any very marked symptoms.

I. S., a young man twenty-two years of age, while walking a narrow plank about ten feet above the ground, lost his balance and fell in such a manner that the whole posterior surface of the body struck the earth. He was stunned, but more from concussion of the brain than from any immediate injury to the spine. After a few minutes he recovered consciousness and walked to a street car, a distance of five blocks, and rode to his home in the upper part of the city. He had no pain except a general soreness, mostly located in the small of the back and occiput, and felt so little discomfort

* Lectures on the Principles of Surgical Diagnosis, etc., London, 1870, p. 149.

that he went the same night to the theatre, remaining throughout a long performance. The next morning, beyond the soreness, there was nothing. There was no special pain in the back, and no impairment either of motion or sensibility in any part of the body. But on the third day, on getting out of bed, he experienced a little difficulty in standing and walking, and soon afterwards numbness, characterized by a feeling as if the limbs were asleep, supervened in both lower extremities. He visited me the same day. His gait was then staggering, the esthesisometer indicated diminished sensibility in all parts of the skin below the dorsal region, and the electric contractility of the muscles supplied by the crural and sciatic nerves of both sides was notably lessened. Toward night the bladder became paralyzed, and it was necessary to draw off the urine with a catheter. All the symptoms increased in severity, and in addition there was atrophy of the affected muscles, so that at the end of the month he was unable to stand, much less walk, and could barely flex and extend the right leg. At no time was there any marked pain in the back or limbs.

He remained in this condition for a month or six weeks longer, and then, having in the meantime been assiduously treated with electricity and ergot, amendment began. This steadily advanced, and six months after the fall he was able to walk with a cane. He is now—somewhat over a year since the injury—apparently as well as ever, except that his limbs are not quite of normal size, and that he is more readily tired than formerly.

Another case was that of a gentleman, who, on attempting to raise a window that had stuck fast, felt something apparently give way in his back. He thought nothing of the occurrence till several days afterwards he experienced pain in the lumbar region, and some numbness in the right lower extremity. These symptoms continued without much variation for several weeks, and then one morning when he attempted to rise from bed, he found that he could barely support the weight of the body on the left leg. This weakness passed off during the day, to be renewed the next morning with greater intensity. A few days afterwards he came under my obser-

vation. He was then suffering with great and constant pain in the lumbar and sacral regions of the spine, pain alternating with numbness in the right leg, semi-paralysis of the left lower extremity, especially of the muscles on the anterior face of the leg, which extend the foot and toes, and incontinence of urine.

Thus far, ten months after the accident, there has been no decided improvement. The left leg is decidedly smaller than the other, walking is impossible without the use of a cane, and the sphincter of the bladder is still paralyzed, except when the patient is kept under the influence of belladonna. The only amelioration is in the anæsthesia of the right leg, which is almost gone, and this fact affords ground for hoping that the motor paralysis may eventually disappear.

I have purposely avoided citing any cases in regard to which there could be any doubt, such as might attach to those resulting from railway accidents. In the next place, however, we have to apply the facts recorded to the special subject of this paper; and here we shall find, owing to the circumstances previously mentioned, that the course is not by any means a clear one.

I do not know exactly to what extent railway companies in this country are yearly mulcted in damages for real or alleged injuries inflicted by the actual or assumed negligence of their servants; but in the year 1865 the following sums were paid by British companies as compensation for personal injuries done to passengers on their lines. Caledonian, £12,849; Great Eastern, £21,996; Great Northern, £22,387; Great Western, £40,067; Lincolnshire and Yorkshire, £24,-708; London and Northwestern, £30,728; London and South Western, £25,000; London, Brighton and South Coast, £4,504; Manchester, Sheffield and Lincolnshire, £6,483; North British, £4,621; South Eastern, £70,726; Midland, £25,958, and North Eastern, £14,355; a total of £304,816, or about $1,525,000, and all this in one year.* I am inclined to think that the yearly total in this country is not much if anything less than this sum.

* Dr. Edwin Morris. A Practical Treatise on Shock, etc., American Edition, Philadelphia, 1868. p. 50.

In Great Britain the subject of railway injuries has been very much more the subject of discussion in and out of the profession. The little book of Mr. Erichsen—which many have supposed to be written in the interest of the claimants, but which is, I think, fairly and honestly conceived—has been the subject of very severe criticism. No one has commented with more severity on the fraudulent character of many of the claims for damages than Prof. Syme, of Edinburgh, and as showing his own opinion and as expressing my own to some extent, I quote the following remarks from an article which he published in the *Lancet* in January, 1867 :

"Since the passing of Lord Campbell's act," he says—"a most unjust piece of legislation as it has always seemed to me—which established the principle of regulating the amount of damages for personal injuries in accordance with the value of individuals to society and to their families, claims of this kind have become very frequent under circumstances which seriously call for consideration. For instance, at this time last year a trial took place at Guild Hall, in the Court of Common Pleas, on the part of a commercial traveler, who prosecuted the Great Northern Railway Company for compensation on account of an injury alleged to have beer sustained from an accident on their line. In this case Sir William Fergusson, Mr. Erichsen, and Dr. Russel Reynolds declared that there was organic disease in the spine which in all probability would soon prove fatal ; while on the other hand, Mr. Borlese Childs, Mr. Poerok, of St. Gorge Hospital, Mr. Cook, of Guy's Hospital, Dr. Risden Bennett, of St. Thomas' Hospital, Dr. Dunsmore, President of the Edinburgh College of Surgeons, and myself, no less confidently expressed the conviction that there was no organic disease whatever, and no reason why the claimant should not enjoy good health. The jury, instead of the £12,000 asked, gave £4,700 damages, and before the end of many months the plaintiff, who had been rapidly recovering, admitted that he was quite well, and still continues to be so. The truth is that when injuries find the medical evidence to be so conflicting, not being able to judge for themselves as to the

merits of the case, they almost always decide in favor of the claimant, so that there is thus great encouragement afforded to unfounded or exaggerated demands for redress. Indeed, any man who travels by railway may easily obtain a competence by standing on the platform after the door of his carriage has been opened by a servant of the company, but before the train has ceased to move. He has then merely to go to bed, call in a couple of sympathizing doctors, diligently peruse Mr. Erichsen's lately published work on railway injuries, go into court on crutches, and give a doleful account of the distress experienced by his wife and children through his personal sufferings which have resulted from the culpable negligence which allowed him to leave his seat prematurely. Who can doubt that in such circumstances the jury would give large damages. This system ought certainly to be put down, and of one means of doing so I beg to suggest the publication of cases exhibiting an entire discrepancy between the medical evidence, in order that regard for personal character may tend to check the reckless advocacy of one-sided views. The results of such cases in regard to the claimant's speedy recovery of health would also be worthy of attention for the same purpose; and having given one of these, I may add a case of medical diversity of opinion that has just occurred here. On April 27th last, a commercial traveler drove out in the evening to my residence in the neighborhood of Edinburgh, and informed me that he had been shaken the night before in a railway collision near Berwick-on-Tweed. He had walked immediately afterwards a mile and a half to see Dr. Maclagan, of Berwick, and having been assured by him that there was no local injury or occasion for confinement, had come on to Edinburgh. Finding that there was no local complaint, I desired him to call next morning at my house in Rutland Street, and tell me if he felt anything wrong. He accordingly did so, and then exhibiting the most perfect freedom in all his movements without any sign of local injury, I concluded that if he felt any uneasiness, it must be more mental than bodily. Having expressed my opinion to this effect, I was rather surprised by being asked to recommend a law agent, and it is hardly necessary

to say declined to do so. On the same day, April 28th, it appears that this person, having procured an accomplished agent, applied to a surgeon of experience in cases like his own, who discovered that he had sustained a severe wrench of the spine and sacro-iliac synchondrosis; the surgeon put him to bed, called in a trustworthy coadjutor, and visited his patient at least once a day for months. On June 12th Dr. Dunsmore requested me to see the claimant, as he had now become. We found him lying upon a sofa, from which he rose and walked with vigor and flexibility of body. There was not the slightest swelling, discoloration or rigidity of the spine, and on the contrary, every appearance of good health, so far as we could judge from our own observation. On July 21st, the trial being about to take place, the claimant desired to be examined by a commissioner; and his ordinary attendant having given a certificate on "soul and conscience" that he was unable to appear in the witness-box without serious injury to his health, I was requested, along with Dr. Dunsmore, to report as to this for the information of the court. We found the claimant lying or rather lolling on two chairs in a garden, to and from which he walked in leaving or returning to his room, which was up a stair on the drawing-room floor. He told us that he sat at his meals, and on the whole he had no appearance of bad health. We reported our opinion that he could safely appear in court, and the trial was ordered to proceed. But the claimant's legal advisers applied for delay. On December 14th, Dr. Dunsmore and I were again requested to see the claimant, as the trial would take place on the 24th. We found that he was not at home; but after a little while we saw him walking stoutly along the street from a public bathing establishment, which it appeared he had frequented for several months. He walked up the stairs of his residence before me, and neither then nor afterwards, when more particularly examined, showed any sign of spinal or other disease. At the trial, after the plaintiff had been examined—seated in a chair, not being able to go into the witness box!—his counsel agreed to accept £1,000, instead of £3,000, which had been demanded. I deemed it unnecessary to offer any observation on this case,

but would suggest the following questions: 1. Could any one who had sustained a severe wrench of the spine and cacro-iliac synchondrosis immediately afterwards walk a mile and a half, or on the following days, travel sixty miles by railway, drive about in cabs and make visits, without local complaint? 2. Could serious disease of the spine, resulting from external violence, exist for eight months without presenting some sign of its presence in the patient's gait, flexibility of trunk, or general appearance?"

Now, while I think Prof. Syme's questions will be answered in the negative by the great majority of competent physicians and surgeons, it must be admitted, in view of what has been adduced in the foregoing pages relative to the effects of injuries of the spine, when there is no motive for deception, that there are cases of real disease following blows, strains and shocks, in which there are no marks of local injury, and in which the patient could, on the two following days, go about in cabs and railway trains, and it is this very fact which renders it so difficult to discriminate the true from the false in certain of the cases that come before us as instances of damage from railway accidents.

As regards many of these there can be no doubt. The symptoms are so very decided and pronounced—so evident both to the lay and professional observer—that there can be no difference of opinion as to their real character. With these we are not at present concerned. We have only under notice that doubtful class of cases in which there is apparently great bodily functional derangement, without sufficiently evident bodily leison, in which the only symptoms are those the knowledge of which we do not obtain by observation, but by the statements of the patient; of such are the following:

During the summer of 1875 I was requested by the Hudson River Railroad Company to examine a Canadian woman who had been injured in a collision on their road, and in conjunction with a medical gentleman to be selected by her, to determine finally what damages, if any, should be paid to her by the company. She had been previously examined by the surgeon of the road, Dr. J. W. Ranney, of this city, and

it was beyond doubt that she had been injured, and had suffered severely, besides losing a great deal of time from her business, that of a milliner, I think. She selected Dr. Frank H. Hamilton, as her examiner and arbitrator, and together we submitted her to careful and thorough examination. I may here state that she had already instituted a suit for compensation in $5,000, and that her attorney intended to amend her complaint, and claim $10,000 for the injuries alleged to have been received.

Now at the time the claimant came under my observation, there were no objective symptoms whatever. She walked quite as well as most women, and there were no urinary troubles ; she complained only of pain in the upper dorsal region, and she winced when pressure was made on the skin over the vertebræ of that part, just as ninety out of every hundred American women do, or rather did several years ago, when they were accustomed to take less physical exercise than they do at present.

I think Dr. Hamilton accepted her statements as true—if I am wrong, he will correct me—and was inclined to think they indicated serious trouble of the cord. I did not accept her account in its entirety, and admitting its truth, I did not consider the affection indicated as a very important disorder. We, as a compromise, awarded her $4,000. That she was entitled to something was undoubted, and I thought that sum a sufficient and fair award for the suffering and loss she had undergone. Had the case gone to the jury with Dr. Hamilton's evidence in her favor, she would probably have obtained a much larger sum.

Now of course our distinguished President and the whole Society will understand that I am not criticising Dr. Hamilton's opinion or action in this case. He had just as much evidence in support of his views as I had to sustain mine ; such differences of judgment will occur so long as men are not all cast in the same mold. It is too much the custom to associate them to an extreme degree with the members of the medical profession, and the proverb of "When doctors differ who shall decide ?" is continually quoted whenever two or more physicians are at variance. But it must be recollected that

the saying was originally applied, not to doctors of medicine, but to those of theology, and that lawyers, aye, even courts—which of all bodies should be without difference—are constantly at variance in their opinions. Even in the very material matter of the strength of materials, the test of chemical substance, or even the coarse and apparently most easily determined matter of the cost and difficulty of taking down the topmasts of the ships that are to pass under the East River Bridge, we find the estimates vary from a few cents to five hundrd dollars, and from half an hour's time to a day. I do not, of course, know the line of reasoning pursued by our distinguished President in getting at his idea of the damage, past, present and prospective, sustained by the claimant I have referred to. My own opinion referred mainly to her past condition, and at the same time I gave her a fair benefit of the doubt I had in my mind in regard to her state when I examined her. As to the future, I was well satisfied that she could readily be cured, as the very great majority of such patients are, by proper medical treatment.

Several years ago I was requested to examine a physician who had, as it was said, been injured by a railway collision. I saw him on the part of the company. The evidence was very clear that an actual injury had taken place. At the moment of collision he was standing in the passage-way between the seats, expecting the shock, and when it came he was thrown violently to the floor. He was unable to walk, was carried to a neighboring hotel, and was soon afterwards seized with severe palpitation of the heart and vomiting. He never completely regained his motive power—at least he walked with that staggering and titubating gait which is so difficult to assume. He became emaciated, and his general health was much disturbed. The evidence all went to show that he had consistently exhibited these symptoms, even at times when he was not conscious of being observed. But I was nevertheless satisfied that there was every prospect of an ultimate recovery, perhaps after several years, and that certainly there was no such progress of his disease as would lead to complete paralysis. I accordingly so testified, though several other eminent physicians gave evidence to the effect

that death would probably ere long result. The jury found a verdict in his favor for, I think, $8,000, instead of $15,000 claimed—a righteous verdict, I conceive, for the patient, though much improved after five years, is, as I learn, not yet entirely restored to health.

In this case there were objective symptoms—the collapse in the first place, and the emaciation and the consistent lameness which subsequently ensued—so that I felt warranted in testifying that the claimant was undoubtedly injured, though probably not severely as he and others thought. The result has abundantly satisfied me of the correctness of this view.

Quite recently I was applied to by a young man, who informed me that about a month previously, in getting off a street railway car, he had been violently thrown to the ground, so that he had wrenched his back, had become partially paralyzed in both legs, and was unable to pass his water without using a catheter. Besides wanting my professional advice, he desired an examination, with the special view of having me testify before a court in a suit for $20,000 damages, which he intended to institute against the railway company. The fact of the fall was undisputed. I caused him to take off his clothes, and I found at once that there was no emaciation. On the contrary, his body was remarkably well nourished. He complained of pain in the cervical region of the cord, and screamed in apparent agony when I touched the spinous processes of all the vertebræ from the third to the seventh. It appeared to me then that there was a very unusual degree of hyperæsthesia. The grasp of both hands was not strong, but on testing him with the dynamometer, the object of which he knew was the estimation of his manual strength exactly, he pressed the instrument with even greater feebleness. I was therefore satisfied that he was making the most of his condition, if not actually deceiving me. I then asked him to walk across the room several times till I told him to stop. He began, and tottered over the floor as if about to fall at every step. As he continued walking, however, he forgot himself, as I expected he would, so that after half a dozen turns his gait was measurably improved. I need scarcely remind the medical portion of my

audience that if there had been any serious affection of the cord his walking would have become worse instead of better.

In the next place I examined him with the esthesiometer, the use of which he did not know, but which I was well satisfied would establish the fact of his contemplated fraud. He had previously informed me that his arms and legs were constantly numb or "asleep" as he expressed it. If this were really the fact, the esthesiometer would indicate diminished sensibility, if not, the result would be normal. I therefore went very carefully over the skin of both arms and both legs with the instrument, taking a record of the observations, and found, as I was quite sure would be the case, that there was not the slightest derangement of sensibility in any part of the body. The skin over the spine which was so painful to my touch was not in the least degree hyperæsthetic to the esthesiometer.

This was about sufficient, but there was one other point in regard to which I desired exact information, and that was the alleged paralysis of the bladder. He came to me at about one o'clock P. M., and in answer to my inquiry said that he had passed no urine since he rose from bed at seven o'clock, and that he had then used the catheter. Now, it is well known that in paralysis of the bladder the urine becomes alkaline by being retained a long time in contact with the vesical mucous membrane, and that it is sometimes secreted with an alkaline reaction. It was absolutely certain, therefore, that if he had been affected with paralysis of the bladder for over a month, as he informrd me, and had passed no urine since seven o'clock in the morning—six hours and more—the secretion would be strongly alkaline. I accordingly introduced a catheter and drew off about half a pint of urine entirely free from ammoniacal odor, and on testing it with litmus paper, found it to be of normal acid reaction.

I then accused him of deception, and recapitulated to him the points which by his insufficient knowledge of the subject had led to his detection. After numerous protestations, he confessed that he had been drilled by an attorney—not a member of this society, or of any other reputable organiza-

tion—to simulate spinal injury, with the view of defrauding the company. Should he ever appear in court as a claimant, he will probably go out of it on a charge of perjury.

In conclusion, while I think it must be admitted that injuries of the spine may lead to disease the symptoms of which are all subjective, it is I am sure equally true that close observation, a thorough study of the history of the case and minute examination will often lead to the detection of fraud, if there is fraud.

It must be borne in mind that the simulator of disease generally overacts his part, and that he scarcely ever knows enough of the very intricate subjects of spinal physiology and pathology to play a consistent role. In cases of simulated disease we will usually find, likewise, that the subjective symptoms are more intense than the objective, a condition which when both classes of phenomena are present does not exist. It is also very much easier to counterfeit complete than partial paralysis. The fraudulent claimant, not knowing this, attempts the latter in his irregular movements—for the motions of partially paralyzed limbs present certain definite characteristics which the experienced physician will at once recognize—lead to his detection.

I am aware that there is much more that could be said on the subject; but if I have not completely elucidated it, I may perhaps have inserted the entering wedge to its discussion and amplification.

MEDICO-LEGAL SCIENCE.

A SKETCH OF ITS PROGRESS, ESPECIALLY IN THE UNITED STATES.

By JAMES J. O'DEA, M. D.

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I. The scope of Medico-Legal Science has widened with the progress and specialization of knowledge. It was limited in its infancy to the reference of doubtful or disputed points in legal processes to the opinion of some established medical authority, whose utterances, deemed oracular, were accepted as conclusive. After this fashion law took counsel with medicine in the time of Hippocrates, and for centuries thereafter. Doubtless in the then primitive state of scientific knowledge the answers got from traditional medicine were, on the whole, satisfactory to the dispensers of justice.† But with the increasing complexity of social relations and institutions, judicial questions arose that were no longer soluble

*Read before the Society Sept. 6, 1876.

† There are numerous references to medico-legal subjects in the Justinian Code (A. D. 533), as shown by the following titles: *De Statu Hominum; De Inspiciendo Ventre, Custodiendoque partu; De Muliere qui peperit undecimo mense; De Impotentia; De Hermaphroditis;* but, as was customary to an even later date, all such questions were referred to the authority of Hippocrates, rather than to the judgment of any living expert.

in this simple way—questions of poisoning, of homicidal and suicidal death, of wounds incidentally or necessarily fatal, of potency or impotency affecting the continuity of the marriage tie and the legitimacy of offspring ; questions of pregnancy as involving succession to estates, and of insanity in relation to civil rights and criminal responsibility. Courts of law, perplexed by the intricacies of the medical aspects of these and cognate questions, demanded reasoned opinions based upon personal knowledge and experience, instead of the parrot-like repetition of traditional laws, once deemed satisfactory.

Fortunately for the rights of individuals and communities alike, the progress of medicine kept pace with the ever-widening sphere of law. It was, on the whole, a real progress, made upon the solid ground of observation and research. There could have been no scientific basis of medicine without, in the first place, a knowledge of the anatomy and physiology of the human body. Previous to the time of Mondino, (who flourished in the beginning of the fourteenth century), anatomy had been studied in the bodies of the brute creation only. In the age of the Ptolemies, it is true, Herophilus and Erasistratus, two physicians of Alexandria, had dissected some human subjects. But, owing to the prejudice against profaning the dead body, their example was not followed, and for five hundred years the only authority on the subject was Galen, whose descriptions were based upon his limited knowledge of the organic structure of the lower animals. Even Mondino—who broke the long monotony of the post-Galenean anatomy—did not escape the influence of this prejudice. For him a knowledge of the structure of the brain was forbidden fruit—forbidden by religious scruples which made him fear to open the head, lest by uncovering the seat of the soul he should commit a mortal sin. It was not until more than two centuries after Mondino's time—when the intrepid Vesalius laid bare the secrets of the human frame, and published his dissections to the world—that the authority of Galen was dethroned for all time.

The progress of physiological knowledge was equally slow and labored. Remarkably crude notions prevailed in ancient

times respecting the organic functions. In the opinion of Hippocrates (B. C. 460) the office of the brain was to attract the vapors (so imagined) from the interior of the body, and that of the muscles to cover the skeleton. Aristotle, an accomplished naturalist and son of a physician, seated the intellect in the heart. Indeed, time would fail me were I to rehearse the list of the fanciful theories prevalent in this department of knowledge until the days of William Harvey. Harvey's great discovery of the circulation of the blood (A. D. 1628), put these idle speculations to flight, and inaugurated the dawn of a long and prosperous day for medicine. Thenceforth the science of physiology took a new departure. Following Harvey came Malphigi (A. D. 1661), examining the blood corpuscles with his microscope, demonstrating with the same instrument the vesicular structure of the lungs, and establishing by observation and reasoning the true mode of respiration. And, finally, to these succeeded Haller (A. D. 1747) who laid broad and deep the foundations of modern physiology.

A like progress might be traced in chemistry (a science equally essential to medical jurisprudence), from the fanciful dreams of the alchemists—to the discoveries of Lavoisier, Dalton, and the later chemists,—but why weary you with more details? Why, indeed, at all, save for this one reason that, enjoying as we do—we lawyers and physicians of this Society, and we members all of this commonwealth—the full benefits of a ripe medical knowledge, we are prone to forget how much its progress is owing to the labors of its own apostles; how little to the aid of either law or society. There is room for an instructive comparison between the development of jurisprudence and of medicine in this particular, but this is not the place to make it.

Dating from the great discoveries I have mentioned, a new era began for medicine, and a fresh field was opened to her usefulness. No longer the handmaid of superstition, nor the mouthpiece of blind tradition—groping in the sick room, fumbling among philters and unguents—she had courage to go abroad, to breathe the common atmosphere, to take part in the discussion of those issues that occupy the thoughts of

serious men. Soon, too, with knowledge came influence and power; medical science was made indispensable not only to individual comfort and safety, but to the maintenance and of public and private rights. It appeared above all as a valuable helpmeet to law; and out of this important relation sprang that body of legal medicine—of medicine in its legal bearings—which, beginning with the anatomical discoveries of the fourteenth century, has reached its latest development in the institution of medico-legal societies, first in this city of New York, and subsequently in the two widely separated cities of Paris and Cleveland.

II. The first authoritative recognition of the legal value of medicine came from a German principality, where reigned George, Bishop of Bramberg. In 1507 his worthy minister, the Baron Schwartzenberg, drew up a penal code in which the need of medical evidence in some doubtful cases was acknowledged and declared. Notwithstanding, the mass of the German States repudiated so unprecedented an innovation in the established order of things, and for some time its success was very uncertain. But in 1532 the Diet of Ratisbon was persuaded by the Emperor Charles V. to adopt a uniform code for all Germany, didactic rather than imperative in character, the main purpose of which was to instruct unlearned judges how to proceed in criminal cases. This code—the famous *Constitutio Criminalis Carolina*—was founded on its predecessor of Bramberg, and contained the obnoxious clause requiring magistrates to seek counsel from physicians in all cases of violent death, procured abortion, and such other acts as should become the subjects of legal investigation. Thenceforth Germany took the lead in medical jurisprudence, a position which, it is only just to say, she has kept with few exceptions ever since.

The fruit of this public recognition of the legal value of medical knowledge soon appeared in the shape of a succession of works relating to Medical jurisprudence. One of the first of these was Ambrose Paré's treatise on tardy births. It was soon followed by the *De Relationibus Medicorum* of Fortunatus Fidelis, a good compilation of the extant medical knowledge of the day applied to juridicial inquiries, albeit

marred by subserviency to canonical law. This work appeared at Palermo in 1602.* In the two centuries intervening between its issue and the rise of our Republic, the European medical mind produced numerous treatises of various scope and more or less enduring fame. I shall do little else than mention the titles of some of the more important of these treatises. First in order of time came the elaborate production in successive volumes of Paolo Zacchia‡ at Rome, between 1621 and 1650, entitled *Questiones Medico-Legales.* Chemistry and physiology were still in their infancy, though anatomy had made considerable progress; it is to the advance of this latter branch most probably that the acknowledged excellence of Zacchia's treatise is due. It was the first of its kind to present legal medicine with any degree of scientific precision.

In 1628, while Zacchia was writing the *Questiones,* Harvey published his great discovery of the circulation of the blood. Its influence on the advancing science of medical jurisprudence was soon manifest. Harvey himself was no mean investigator of medico-legal questions. He undertook to test the value of Galen's dictum respecting the difference between adult and fœtal lungs in relation to the question of infanticide. The hydrostatic test was then engaging the attention of writers and experimenters. In the thirty years between Zacchia's treatise and that of Bohn (presently to be mentioned), disquisitions on this test were written by Bartolini, Swammerdam and Jan Schreyer, not to mention others of perhaps equal note. Bartolini, a Danish physician, insisted that the test of the infantile lung sinking or swimming, told whether or no respiration had taken place, and to his researches on this point he added others on the period of utero-gestation. The close of this century was signalized by the production of a once celebrated treatise, the *De Renunciatione Vulnerum* of Bohn. Bohn was also author of the *Dissertatio*

* This is the date given in the American Cyclopedia (Revised Ed., 1873, Art. *Medical Jurisprudence*), and, if I mistake not, in the Encyclopædia Britannica. Dr. Beck, in his treatise on Medical Jurisprudence (Eleventh Ed., *Introduction*) fixes it earlier, viz., in 1598.

‡ Spelled sometimes *Bacchias*, otherwise *Bacchia.*

Medicinæ Forensis and of the *De Officiis Medici Duplicis—Clinici et Forensis*—works whose mere titles sufficiently indicate the practical tendency of the time.

As Germany was the cradle of medical jurisprudence, so also she was the first country to establish lectures upon that subject. About the middle of the seventeenth century Michælis delivered the first course of forensic medicine in the University of Leipzig, and his example was followed by Bohn, the author to whose works I have just now alluded.

In France, excepting Blégny's *Doctrine des Rapports en Chirurgerie*, and the subsequent as well as more useful work of Devaux, *L'art de faire des rapports en Chirurgerie*, very little was done during the seventeenth century to promote Medico-Legal Science. I must not omit to mention, however, that in 1603, more than half a century after the Diet of Ratisbon, Henry IV., of France, authorized his medical adviser to appoint skilled physicians and surgeons to the duty of making judicial inspections in all the jurisdictions of the kingdom. For some unexplained reason this commission failed to meet the expectations of the throne, and it was dissolved in 1692 by Louis XIV., who substituted for it the office of hereditary royal physician and surgeon. But in consequence of the venality and mismanagement of the incumbents of this office it was abolished in 1790, and the subsequent events of the Revolution gave no time for the consideration of medico-legal reform.

Throughout the greater part of the eighteenth century Germany kept the lead in medical jurisprudence. Professorships of the Science were established in many of her universities, and her writers grew more numerous than ever before. Her chief works of this time were Storch's *De Medicine Utilitate in Jurisprudentia* (1730). Its main aim was to vindicate the high importance of medico-legal study. Then followed Alberti's *Systema*, in six volumes. Professor of legal medicine at Halle, Alberti was deeply imbued with the doctrines of Stahl ; but though there are conspicuous traces of the undue influence of his master's teachings in the *Systema*, his industry in the collection of facts made it the completest treatise of its time. Another important production of this period is

Tichmeyer's *Institutiones Medicinæ Legalis Vel Forensis*, for long a text book in the hands of practitioners and students. It is to the industry of *Schlegel* however, that Germany owes one of the most useful publications of the eighteenth century, if not indeed the most useful one. It was entitled *Collectio Opusculorum*, and consisted of some forty dissertations by various German writers on numerous medico-legal topics, including wounds, poisoning, infanticide, utero-gestation, insanity and the legal inspection of dead bodies. It was in fact a thesaurus of the medico-legal literature of the first half or three-fourths of the eighteenth century, and as such, apart from its other merits, it possesses no slight value as a landmark in the history of medical jurisprudence.

In Italy, excepting Valentini's *Pandecta Medico-Legales* (a collection of academical discussions and opinions or medico-legal authorities up to his time), published in 1701, and again, together with his *Novellæ*, in 1722, little was done during the eighteenth century. A like torpor had settled on medico-legal science in France until the celebrated Villebranch case brought out a lively conflict of opinion between Louis, Astric and Bovart on the one side, and Lebas with Petit on the other. The main question in dispute related to the truth of the pretended instances of protracted utero-gestation, Louis and his colleagues denying, while his opponents affirmed their existence. The reasoned opinion of Louis is remarkable for breadth and logical precision, and with him rested the honors of the day. His subsequent efforts in legal medicine were some valuable communications to the Paris Royal Academy of Surgery on the reliable signs of death, on drowning and the means of distinguishing between suicidal and homicidal hanging. He also delivered a series of learned opinions on the case of Calas and others.

The impetus given by Louis to medico-legal inquiry in France was seconded, and in a measure anticipated, by Chaussier, who addressed the Academy of Dijon in 1789, on the importance of minute and careful inspection in all cases of death from blows or wounds, and whose course of lectures in the same town in 1789 was the first ever delivered in that country. Upon the heels of Chaussier's address came

Fodéré's great *Traite de Medicine Legal* in 1790, a work rich in illustrative cases, still frequently quoted in our standard treatises, and forming an epoch from which the subsequent great activity of French medico-legal investigators must be dated. The most generally known publications during this century since that of Fodéré are Orfila's *Traite des Poisons, ou Toxicologie Generale*, in two volumes, followed by his *Elements de chimie applique a la Medicine* and his *Traite des Exhumations Juridiques*, a work afterwards merged in the famous *Traite de Medicine Legale*. Though born in Spain, and a student of medicine at Barcelona, Orfila's fortunes were cast in France, where he became naturalized, and where. among other appointments, he held the professorship of medical jurisprudence in the Faculty of Medicine of Paris.

The enthusiasm for medico-legal science spread from Germany and France to Great Britain in the first decade of the present century. Previous to that time, England, which had given new political and philosophical doctrines to Europe, had made little or no progress in the study of medico legal questions. True, a few tracts relating to those questions had been written by Monro, Denham and the brothers John and William Hunter, but no attempt had been made to teach medical jurisprudence, either through the medium of lectures or of systematic treatises. Dr. Samuel Farr's *Elements of Medical Jurisprudence*, published in 1788, was the first English text-book on the subject, though it was mainly a translation. To Scotland was reserved the honor of inaugurating those medico-legal studies which have since been pursued with so much success both there and south of the Tweed. In 1801 Dr. Andrew Duncan gave at Edinburgh the first course of lectures on medical jurisprudence that had ever been delivered north of the British Channel, and in 1806 Dr. Andrew Duncan, Jr., his son, occupied the first chair of legal medicine in the same city. The year 1816 saw the first original English publication on the subject. It was the prodution of Dr. Mall, who entitled it an *Epitome of Judicial and Forensic Medicine for the use af Medical Men, Coroners and Barristers.* Two years later appeared the first English book on a subject which more, perhaps, than any other since its publication,

has occupied the minds of lawyers and physicians. It was Haslam's *Medical Jurisprudence as it relates to Insanity, according to the law of England.* About this time, too, Dr. Gordon Smith published his *Principles of Forensic Medicine*, a book rich in references to adjudicated British cases, and, upon the whole, the most satisfactory of its day. In 1820, Dr. William Hutchison issued his tract on *Infanticide*, and soon after appeared that excellent and entertaining joint production of a lawyer and a physician, Paris and Fonblanqué's *Medical Jurisprudence.* Thenceforth legal medicine made rapid progress in Great Britain ; her medical schools established professorships on the subject, and her physicians vied with their brethren on the continents of Europe and America in the production of treatises and dissertations which supersede all that was done by earlier workers. If this statement needed confirmation, I should only have to point to the works of Guy, Christison and Taylor, not to mention a host of less comprehensive, though, within their respective limits, equally valuable productions.

III. Almost contemporaneous with Dr. Andrew Duncan's course of lectures in Edinburgh, and two years previous to the establishment of a chair of medical jurisprudence in the same city, a course of medico-legal lectures was delivered here in America, at Columbia College, by Dr. James S. Stringham, a native of the city of New York. After returning from the University of Edinburgh, whither he had repaired to finish the medical education begun in this country, Dr. Stringham was appointed Professor of Chemistry in Columbia College. Warmed by the enthusiasm for medical jurisprudence which he had imbibed in the capital of Scotland, he volunteered, in 1804, a course of lectures on the new science, and encouraged by the interest he awakened in his hearers, repeated the course every year until his resignation. In 1813, he was appointed to fill the chair of Medical Jurisprudence in the College of Physicians and Surgeons of this city, and performed the duties of this position with signal success, until ill-health obliged him to resign. In the untimely death of Professor Stringham, which occurred on the 29th day of June, 1817, twenty years from the beginning of a use-

ful and even brilliant career, medico-legal science in this country lost its pioneer and one of its most earnest and successful teachers.

Many of the prominent medical schools throughout the country were not slow to follow the example of Columbia College. Philadelphia Medical College founded a chair of Medical Jurisprudence in 1812. The Western Medical College instituted one in 1815, with Dr. Theodoric Romeyn Beck, author of the famous text-book on Medical Jurisprudence, as lecturer. This noted appointment was followed by that of Dr. Walter Channing as Professor of Medical Jurisprudence in Harvard University. By the middle of the century instruction in forensic medicine was generally recognized as an indispensable part of a complete medical education.

Seventy-two years have elasped since Dr. Stringham delivered his first course of lectures on Medical Jurisprudence at Columbia College, and in that time the American literature of the subject has grown to large proportions. Dr. Beck's well-known treatise on the Elements of Medical Jurisprudence first saw the light in 1823, since when it has passed through twelve editions. The great work of Wharton and Stillé—the latter a prominent physician, the former a distinguished jurist—now in its third edition, comprises the most exhaustive treatise on psychological law extant in our language. Besides these, which are the most popular of medico-legal text-books, we have a clear, concise and sensible volume by Mr. Dean, of Albany, N. Y., in many respects entitled to rank with the two great treatises just mentioned.

These are the general treatises on medical jurisprudence which have emanated from the pens of American students of legal medicine. The original productions on special medico-legal subjects are far more numerous, and may, for convenience sake, be classified under three heads, viz. : *Insanity*, *Malpractice* and *Medical Evidence.*

And first of Insanity. The study of the medico-legal relations of the insane is of recent origin, extending not much further back than the beginning of the present century. It dates properly from the demolition of the purely psychic

theory of Insanity. This theory, condemned by Hippocrates and his immediate followers survived them all and continued predominant through antiquity and the middle ages down to the year 1750, when it received its first blow. The philosophers of the eighteenth century had labored to destroy the spiritual notions of their predecessors, and had introduced their rational ideas into the investigation of mental phenomena. But it was not with them that the great change in the doctrines and treatment of insanity began. Its origin was here in America, among men neither ignorant of the drift of phylosophy in the old world, nor wholly exempt from its influence. It was in the then colonial settlement of Pennsylvania that Benjamin Franklin, assisted by individuals of equally benevolent dispositions, established the Pennsylvania Hospital, the first institutiou of its kind in the country. Its foundation was contemporaneous with the English conquest of Canada, and (what is of more immediate importance to us at the present moment) the beginning of American Medical Science. Until this time the practice of medicine and surgery in the United States was, I may say, entirely in the hands of ignorant pretenders, with here and there a sprinkling of well-meaning missionaries, whose stock of medical lore was limited to what they had acquired by their own untutored observation. Few trained medical men cared to leave the comparative ease and comfort of practice among a luxurious and thickly-settled community like England, for the hardships and dangers of new-born colonial life. But with the British regiments that made New York the base of their operations against Canada, there came a staff of highly trained military surgeons, and in the hospitals established for the troops under their care, our native aspirants to medical and surgical skill had their first opportunity of witnessing the treatment of the sick and wounded according to established principles.

The foundation of the Pennsylvania Hospital was, as I have just said, contemporaneous with this new movement, and it is evidence of the progress of knowledge, even in those days, with regard to the nature of insanity, that a special department of that institution was appropriated to the treatment of

the insane. Spreading from this as a centre, special institutions for the management of lunatics have arisen in all sections of the Union, and number now some seventy-four in all.

Around these several *loci* for the treatment of insanity there has grown up a body of experts in that disease. They are men who have acquired the power to discriminate not merely between the sane and the insane, but between the different kinds of insanity; and who, from knowing the intellectual and moral status of the insane, claim a voice in the decision of their civil rights and criminal responsibility. One of the first fruits of the investigations of these experts—investigations pursued within the walls of lunatic asylums—was a classification of the insane. Hitherto one kind of insanity had monopolized attention, or, rather, all forms of the malady had been confounded in one—that in which the reason was wholly involved. One thus afflicted might have his lucid intervals it is true, but when these were over his mind lapsed into total derangement. Soon, however, it was discovered that there was a partial, as well as a total, disorder of the reasoning faculties. And soon, again, another fact was discovered that there was an insanity of the moral faculties without any *apparent* abnormality of the reasoning powers. And then, finally, after the refinement of classification had been pushed still further, not a few of the many students of mental disease boldly declared that one might be insane in a single thing only, while perfectly sane in all other things.

Turning now from this superficial glance at the progress of medical knowledge respecting the insane, to the legal relations of insanity, we shall find the beginning of that antagonism betwen the two which is as yet far from a reconciliation. After the new science of mental disease had abolished the error that insanity necessarily involved the entire mental organization, it found this notion still surviving in courts of law, influencing their rulings and decisions. Gradually it succeeded in abolishing it here also, and successfully maintained the doctrine of partial insanity as an excuse for crime. But the indispensable legal test of responsibility still remained the capacity *to know*, and continued the same even

after criminal acts done under the influence of delusion had been exempt from punishment.

Down to this time, at all events, there had been no contest between law and medicine on the test of responsibility. That contest began when an entirely new claim was set up for the *medically* insane; when some alienists maintained the co-existence of moral insanity with intellectual soundness—with the capacity to know—and declared that this exclusively moral insanity conferred immunity from the penal consequences of criminal acts. Originally advocated by Dr. Pritchard, of England, this doctrine has been maintained with much earnestness, eloquence and ability by Dr. Isaac Ray, of Philadelphia. His views were set forth as early as 1836, in a book on the *Jurisprudence of Insanity*, which has gone through five editions, and which, despite the many competitors that have since appeared, holds it rank as one of the ablest in our language. But the theory of emotional insanity as advocated by Dr. Pritchard and Dr. Ray, is now repudiated by courts of law and opposed by the majority of alienists.

Hardly any medico-legal topic of the last forty or fifty years has occasioned more literary activity than this one of the relations of lunacy to responsibility. It has been discussed in numerous special treatises and monographs, some reprints from English works, and others the productions of American authors. Among the reprints I shall mention Dr. Maudley's *Physiology and Pathology of the Mind* and his *Responsibility in Mental Diseases*. The latter of these works treats almost exclusively of the medico-legal relations of lunacy, an aspect of the subject which forms but an incident in the contents of the former. Besides these, which are standard works, (though the partisan tone of the *Responsibility in Mental Diseases* detracts somewhat from its merits as a scientific exposition,) we have a reprint of Dr. Blandford's clear, concise and judicious book, where the legal relations of insanity are treated with admirable skill and fairness. This book is made doubly valuable to the American reader by Dr. Ray's Appendix, giving the laws of the several States of the Union in regard to the custody and confinement of the insane. Of monographs, published either separately or col-

lectively, I shall mention Dr. Hammond's *Insanity in relation to Crime*, published in 1873, and the numerous issues of the New York Medico-Legal Society, probably the most interesting collection of their kind in the English language, published in book form in 1874. Among the current literature of the subject the most noted are the *American Journal of Insanity*, published at Utica, N. Y., and conducted by Dr. Gray, Medical Superintendent of the State Lunatic Asylum; the now extinct *Quarterly Journal of Psychological Medicine*, edited by Dr. Hammond, and its able successor, the *Journal of Nervous and Mental Diseases*, issued quarterly in New York.

The progress of our survey leads us next to Malpractice and Medical Evidence, though of the latter, which might well claim an evening to itself, the limit of time at my disposal will oblige me to say very little.

Actions for criminal malpractice against medical men are rare, to the honor of the profession be it said, but suits for civil malpractice have been unnecessarily common, and are so even yet. Surgeons are the principal sufferers by these suits, whilst amputations, fractures and dislocations constitute the chief emergencies from whose results they have arisen.

During the first half of this century, civil malpractice suits were so frequent as to cause serious apprehension in the ranks of the profession. Many surgeons of great skill and experience, panic-stricken, abandoned the practice of an art whose uncertainties and risks involved serious consequences to reputation and property, whilst those who continued ministering to surgical cases did so in fear and trembling.

This unfortunate state of affairs—unfortunate whether we regard the interests of surgical science or those of the community—is immediately traceable to popular misconception as to the possibilities of surgical skill. But the causes of this misconception existed elsewhere, and were chiefly two in number. There was, first of all, on the side of the lay community, a natural and very excusable ignorance; and secondly, on the side of the profession, or rather I should say of some of its members, the making of too confident promises as to the result of surgical treatment; for it should in candor be confessed that no insignificant share of the

public misunderstanding, to which allusion has been made originated in the imprudence of surgeons themselves. The combined result of these causes was that the public expected and even demanded more than the profession could perform.

The first step in the removal of this state of ignorance on the one side, and of presumption on the other, was the enlightenment of profession and public alike. The task was begun by instituting rigorous inquiry into the results of surgical treatment, in fractures and dislocations more especially since these were the things in regard to which most ignorance prevailed. The first to undertake this inquiry was our honored President, Dr. Frank Hastings Hamilton. He visited many, perhaps most, of the chief centres of surgical experience, made careful examinations, including measurements, of the fractured limbs under treatment in their hospitals, not overlooking the dry specimens in their museums, and compared finally the results thus obtained with cases in his own experience and in that of his contemporaries. The product of these labors saw the light in a series of publications extending from 1849 to 1868. The first and second of these publications were cast in the form of tables of fractures giving, among other items, the place and character of each fracture, together with the final result of approved methods of treatment. The third comprised a series of papers on *Deformities after Fractures*, and was undertaken in 1855, at the request of the American Medical Association. This series, detailing the histories of 605 cases, was published in the transactions of the above-mentioned Association for the years 1866, '67 and '68.

Dr. Hamilton's labors had the effect of modifying, to a very important extent, the current notions as to the prognosis of fractures. The standard authorities in surgery, with possibly here and there a rare exception, had been teaching that the general result of the skillful treatment of fractures ought to be union, without shortening or other deformity. The distinguished editor of Chelius's Surgery, Dr. South, had even declared that the medical attendant would he himself at fault in most cases where so happy an issue was not

secured.* Now although this assertion was undoubtedly hazardous and extreme, yet coming as it did from a master in the surgical art it was only too promptly echoed by the rank and file of the profession, and too readily taken up by the public, who on their part, soon learnt to exact that which their medical attendants declared themselves able to accomplish. Such being the state of the case, it is not at all surprising that in some of the many instances in which the cure disappointed the expectations of the patient, whether these expectations were created by public rumor or by the promises of his surgeon the surgeon should have had to defend his reputation and property in a suit for malpractice.

No small share of the failures and sufferings incident to active life is consequent upon a vainglorious assertion of our powers, or, may be, a somewhat culpable ignorance of their limits. To take an instance of the latter alternative, here was a great misconception of the limits of surgical skill, and to its authors, no less than to its perpetuators, whatever their motive, whether honest conviction or the greed of self-glory, is due much of the pecuniary loss and moral obliquy that have overtaken many discreet and conscientious surgeons in the discharge of their professional duty. But the remarkable thing about the misconception alluded to was this, that it had no basis of fact, or at least none wide enough to give it anything but a mere semblance of support. It was one of the too plentiful brood of hasty generalizations that are every day built upon a limited number of instances imperfectly observed. The truth is, that no trustworthy statistics had been preserved in any of the great centres of hospital practice; no circumstantial records by which the optimist doctrine in reference to prognosis in fractures could be established. But such disjointed testimony as could be procured proved this doctrine false, and that, too, in the very institutions where it was most confidently asserted. The progress of Dr. Hamilton's inquiry in this direction furnished not the first recorded instance of the superiority of principles to practice, of the conflict between the ideal and the actual, nor the first view of a battle-ground on which prejudice contends against experience and human interest.

* Chelius' *Surgery* edited by Dr. South, Am. ed., vol. I, p. 627.

Whilst Dr. Hamilton was pursuing his labor of love in the cause of truth and justice, the increasing frequency of suits for malpractice was exciting the attention of the medical profession, more especially in the West. At the annual meeting of the Ohio State Medical Society in 1856, it was the subject of an animated discussion, the chief point considered being, however, not so much the proper measures for prevention as the best way of self-protection. Gradually, though, the superior value of the former question came to be recognized by the profession at large, if not by the meeting referred to. It was seen that the most efficient means of prevention (and consequently of self-protection) was enlightenment—the knowledge among medical men of their legal duties and liabilities, the knowledge among courts of law and the general public of the possibilities of surgical skill. It was not long ere books appeared having this double object in view. The first to issue from the press in this country was Prof. John J. Elwell's *Medico-Legal Treatise on Malpractice and Medical Evidence, comprising the Elements of Medical Jurisprudence.* The original edition of this work bears date 1859. The third and latest edition appeared in 1871. Prof. Elwell enjoyed a special advantage for the task he undertook, in having a practical knowledge of law and medicine. The first ten years of his professional life was spent in the practice of physic and surgery, after which he qualified himself for the bar and became a successful lawyer. The object of his treatise is to teach medical men the legal requirements of their position, and to instruct lawyers in the possibilities of practical medicine and surgery. It is aptly epitomized in the celebrated saying of the distinguished Philadelphia counselor, David Paul Brown, which Prof. Elwell selected as the motto of his book, that "A doctor who knows nothing of law, and a lawyer who knows nothing of medicine, are deficient in essential requisites of their professions." The many high enconiums that have greeted this work at home and abroad amply attests both the need there was of it in the successful manner in which its object has been fulfilled.

The effort to diffuse a proper knowledge of the obligations of medical men and the possibilities of their art, begun

by Prof. Elwell, was ably seconded by Prof. Ordronoux, in an elaborate treatise on the *Jurisprudence of Medicine*, and by Dr. M. A. McClelland, of Knoxville, Ills., in a compendious brochure on civil malpractice. Dr. Ordronoux's treatise needs no word of commendation from me ; it is a veritable boon to every student of legal medicine. Dr. McClelland's little volume is in the form of a report which he presented to the Military Tract Medical Society, at its fifteenth annual meeting, in January, 1873. It treats of the legal responsibilities of surgeons, and gives in full transcript many of the more important decisions in adjudicated cases of alleged malpractice. Dr. McClelland is an earnest and patient laborer in this important field, has in press a more exhaustive work on the same subject, bearing title : *Civil Malpractice : A Treatise on Surgical Jurisprudence, with Chapters on Prognosis in Fractures, Negligence and Medical Evidence.* According to the prospectus of this work, with which I have been favored, it is to contain, among other valuable material, an abstract of forty-five cases of alleged malpractice decided in the lower courts, and one thousand tabulated cases showing the results of surgical treatment.*

Down to the time at which we have now arrived, Medico-Legal Science had been exclusively pursued in the study and laboratory. The contributors to its literature had been generally medical men, though in a few prominent instances lawyers had materially assisted them. The great work of Paris and Fonblanque in England, and the greater of Wharton and Stillé in America, were the conjoint products of a literary partnerships between members of the two professions. Dr. Elwell's treatise, lately alluded to, was made possible by the happy combination of ripe legal and medical knowledge in one person.

But aside from these occasional literary partnerships, there had been no concerted effort of the two professions in the interest of Medico-Legal Science, and, above all, no association for purposes of mutual enlightenment and combined action in the medico-legal issues of the day. At length such

*The work is announced for early publication by the Messrs. Hurd & Houghton.

a body did appear; and to this great centre of law and medicine is due the distinguished honor of having founded the first association for the Study of Medico-Legal Science then known to the world. Let us pause a moment to note the origin of this association.

In the Coroner's office of the city of New York, cases with important bearings, legal as well as medical, were of frequent occurrence. The Deputy Coroners (who are medical gentlemen attached to the Coroner's office), while fully at home in the medical aspects of the points coming under their attention, were not infrequently at a loss when obliged to consider their legal bearings. It was the sense of their deficiency in this latter respect that gave origin to the idea of an association to include the professions of law and medicine on a footing of perfect equality.

I well remember the first formal meetings of the Medico-Legal Society of New York. The apostles of the movement were mainly of the medical profession. They numbered a few Deputy Coroners (among whom Dr. Wooster Beach was the leading spirit), some aspiring young medical practitioners, and a fair sprinkling of veterans in the campaign against disease and suffering. With all their sanguine anticipations, and they were full of them, they formed but a very obscure idea of the future scope, importance and usefulness of the Society about to be launched upon the world. They had planned, in fact, no more ambitious *role* for it than that of a kind of appendix to the Coroner's office, a retreat where they might more leisurely and attentively discuss the questions that every day arose in the discharge of the duties of that office, questions which the press of its business left them no other time or occasion to consider. Autopsies entered largely into that business, and so the presentation and study of diseased or injured organs assumed, as a matter of course, most prominence in the Society's earlier proceedings. But scarce six months had elapsed from the date of its organization, in July, 1867, when its horizon began to widen, and from details, not indeed petty, but of secondary importance, it passed to the consideration of questions of broader and more abiding medico-legal interest. Of these *Malpractice* was

about the first to be discuesed. Then followed *Infanticide, The Evidences of Criminal Abortion, The Duties of Medical Witnesses, The Law in Reference to Suicide, and Intemperance in Life Insurance, Methomania in Relation to Business and Criminal Responsibility, Hereditary Diseases of the Nervous System*, and lastly, to close the period of what I may call speculative discussion, *Hereditary Influence in Mental Diseases.* During all this time, in which medico-social no less then medico legal subjects were considered, the Society was unconsciously preparing itself for the more practical issues that were soon to crop up in the courts of civil and criminal procedure. Meanwhile, also, it grew in numbers; many learned and influential men of both professions joined its ranks, and the interest in its proceedings increased with its members, and even spread abroad among the general public. No small share of this outside interest was awakened by the daily press, which liberally devoted its columns to the addresses and debates at the Society's meetings. On their part these addresses and debates were of a nature to elicit the earnest attention of the community. For a considerable period they had reference to the plea of insanity in criminal cases. Several important trials had taken place in which this plea was used, and as many thought abused. A doctrine had come into vogue, advocated by some experts in lunacy, even sanctioned by the verdicts of some juries, whose brief success inspired thoughtful men in general with feelings of distrust. It was the doctrine of emotional insanity, according to which a capital offense, committed in a frenzy of passion, or under some so-called uncontrollable impulse, must be ranked among irresponsible acts. Under this doctrine Cole and some subsequent murderers had escaped punishment for their crimes. And now the plea based upon it had grown so common and had proved so serviceable in the interest of the criminal class, that there arose a general feeling of alarm for the peace and security of society. There was, indeed danger that the unwarranted use of the plea would subject it to public derision, and that its abuse would create so strong a prejudice against it in the public mind, that it would have little weight, even when urged with good faith and on satisfactory

grounds. Such was the general drift of public sentiment in regard to this question when the Medico Legal Society took it up, and almost simultaneously, as though by mutual consent, its partisans and opponents, suspending their contest, committed it to the judgment of the Society, confiding, as it would seem, in the impartiality of its investigation and in the justness of its ultimate decision. The investigation was a protracted one; it is not ended yet, and may not end for a long time to come; but so far as it has proceeded it justifies the public anticipations, and, not only this—it has produced a literature of the subject highly creditable to American medical jurisprudence. The titles of some of the subjects discussed will serve to indicate the scope of this literature. I select them at random, first from the productions of medical members as follows:

A Medico-Legal Study of the Case of Daniel McFarland, The Plea of Insanity in Criminal Cases, The Legitimate Influence of Epilepsy upon Criminal Responsibility, Medico-Legal Suggestions on Insanity, Morbid Impulse, Medico-Legal Points in the case of Daniel Montgomery, Epilepsy in its Relations to Insanity, The Principles of Criminal Responsibility as Applied to the Insane. Then from among the many able addresses delivered by legal members, I may mention the titles of the following; *Does the Law deal unfairly with Questions of Insanity? Legal Responsibility and Accountability, Juries and Physicians on Questions of Insanity, Emotional Insanity.*

The length of this discussion gave ample opportunity for the expression of opinion on the relations in general of law to insanity. Naturally enough, conflicting views were advocated, the legal gentlemen being almost a unit in support of the traditional court rulings, while their medical associates assailed these rulings and advocated their reform. At length, out of the conflict of opinion, came a remedy for the scandals which had been caused by the abuse of the insanity plea, and that remedy was in the shape of a legislative enactment, passed in 1874, making the defense of insanity a separate issue, to be passed upon by a commission ere the trial for the alleged criminal act could proceed. Although this act has been adversely criticised, mainly, I think, on the

ground of its alleged unconstitutionality, its practical workings have been so far beneficial. Dr. Gray testifies to this effect, touching at the same time upon the advantages of the new law, in the report of the State Lunatic Asylum, where he says: "The change in the law regarding criminals has, we think, been generally satisfactory. The question of insanity has come up for trial before a jury in but few cases, mostly those which were indicted under the old law. Commissions of lunacy have been held in the other cases, and the decisions given have been sanctioned by the courts in all instances. By this process errors are less likely to occur, and the expense of a protracted trial of the question of insanity is saved. When the insanity of the person indicted is established, the patient is sent directly to an asylum, and the trial under the indictment, with all its attending expense and evils, avoided. Prominent among these evils is the demoralization which must always take place when insanity is pleaded as an evasive defense—a spectacle which has too often occurred in this State."*

The act making the defense of insanity a separate issue was one of the great services rendered by the Medico-Legal Society to justice and morals in this State. Another of equal importance remains to be stated; I allude to the reform the Society caused to be made in the old law against criminal abortion. That law was, though all unconsciously, be it understood, an incentive to the crime it prohibited. By arbitrarily fixing a time—that of "quickening"—at which the *fœtus in utero* was a living being, it tacitly allowed the destruction of fœtal life, provided it was effected before this period had been reached. I say tacitly allowed, for no punishment was inflicted on the abortionist if he acted before "quickening," unless his act caused the death of the mother. The consequences were evident enough; abortionists flourished, abortions were daily occurrences, and the foundation of social morality was in danger of destruction.

It so happened that about the time the Medico-Legal Society began to grapple with this growing social evil, the

*Thirty-third Annual Report of the Managers of the State Lunatic Asylum, Utica, N. Y., for the year 1875, p. 16.

community at large was suffering from the shock of several recent criminal abortions of a very atrocious character. The events of the day, therefore, were favorable to the success of the Society's efforts. Without loss of time a Committee was appointed to examine the old law and report any suggestions as to necessary reform.* It was my distinguished honor to be Chairman of that Committee, and I can bear testimony to the conscientious manner in which it discharged its whole duty. There is no occasion, however, to enter into a history of the Committee's work ; suffice it to say, that on its recommendations the law against criminal abortion underwent some very important changes, and to these I must briefly allude. In the first place the offense—which, you will bear in mind, was the death of the mother if the abortion had been attempted before quickening—this offense was manslaughter in the second degree, a statutory felony punishable by imprisonment in a state prison for a term not less than four and not more than seven years. Well, the amended law, without, for good reasons, changing the denomination of the offense, increased its punishment by fixing the minimum penalty at not less than four years, the maximum being left to the discretion of the court, in view of the past history of the criminal. In the second place, the law of '69 only punished for giving *medicines* with intent to procure an abortion, overlooking, strangely enough, all prohibition of the use of *instruments* for the same purpose. This very material omission was supplied by the new act. But more important than all these amendments, if we have regard to the actual prevention of criminal abortion, was the change effected by the erasure of the word "quick" from the statute. This radical change made all criminal attempts to procure abortion, no matter at what period of utero-gestation, of equal magnitude as offenses, and has done more than anything else to put a stop to crimes of this kind.

It is with no intention to violate the sobriety of these simple historical details that I call your attention to another instance in which the Medico-Legal Society has served the

* See the New York Medical Journal for January, 1872, where the Report of the Committee is published in full.

cause of justice and humanity. Doubtless all remember the case of Dr. Paul Shœppe, of Carlisle, Pa., who was convicted of murder in the first degree on the charge of having poisoned Maria Stennecke. The proof of this accusation was so weak as to suggest very grave doubts concerning the guilt of the accused, and these doubts were shared by the medical profession throughout the world, wherever the testimony in the case was published. The Medico-Legal Society was just then rising to fame. It was known as an association of legal and medical gentlemen engaged in the study of medico-legal questions. Its efforts in aid of criminal law reform were acknowledged and appreciated; its addresses and discussions were interesting thousands who had hitherto given little or no attention to medical jurisprudence. It was therefore only natural that a society of its standing and influence should be appealed to for a judgment on the vital question of this trial. That appeal actually came, and from the accused himself. It asked for an impartial examination of the testimony, and for a deliberate judgment as to whether it sufficed to convict him. I need not stop to laud the report that was presented to the Society by the Committee appointed on this question; those who are best entitled to speak have anticipated me in the pleasing office. It was referred to in terms of gratitude by the leading counsel for the defense,* in words of high commendation by the learned presiding judge,† and was openly endorsed by at least one conspicuous American alienist. ‡

The care and safe-keeping of lunatics occupied no inconsiderable share of public attention in the early part of the year 1874. It was claimed that sane men and women had

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* The words of this gentleman are: "But I must confess that if it had not been for the thorough examination which your Society gave to the evidence in the first trial (rousing, as did, all the medico-legal (*sic*) societies in this country, and many medico-legal jurists in Germany), the preparation for the second trial would have been vastly more difficult." Clark Bell, *Inaugural Address*, 1872, p. 8.)

† He alluded to the committee's production as "The exhaustive report of your Society, upon which I drew so largely in the discharge of my official duties in that case." (*loc. cit.*)

‡ John J. Reese, M. D., Professor of Medical Jurisprudence and Toxicology in the University of Pennsylvania.

been immured in lunatic asylums, and that in the majority of instances where such violations of personal freedom had taken place, they were owing to the carelessness, ignorance or even connivance of the certifying physicians. It is undoubtedly true that in some rare instances sane persons have been confined in lunatic asylums. Not only, however, was their number much exaggerated, but the motives of the committing physicians was misunderstood and their conduct misrepresented.* The public believing the real state of the case to be such as it was represented to them, clamored for redress, and, accordingly, an act passed the Legislature in the year above mentioned, entitled *An Act to revise and consolidate the statutes of the State relating to the care and custody of the insane, the management of asylums for their treatment and safe-keeping, and the duties of State Commissioners in Lunacy.* It enjoined (1) a certificate by two physicians under oath, after a personal examination of the patient, setting forth his insanity; (2) that the certifying physicians must be qualified medical men, of at least three years' practical experience in the profession.

While this act was pending in the Legislature, the general subject of the care and custody of the insane was under discussion by the Medico-Legal Society. A paper had been read on the *Rights of the Insane*, and out of its consideration had grown a wish to aid in securing any desirable reform in the law relating to the confinement of lunatics. The act already mentioned gave a practical aim to this wish, and at a protracted meeting of the Society the entire subject was considered in a debate conducted by some of the most accomplished alienists of the State. This interchange of opinion threw a flood of light upon the question and contributed not a little to the success of the law, which, aside from the popular misconception that gave rise to it, is better than its predecessor.

One more achievement of the Medico-Legal Society re-

* That the commitment of sane persons of lunatic asylums is due to other causes than those generally apprehended, is probably from the fact that despite the greater stringency of the present law, the number of such commitments is the same as formerly. For evidence on this point, see the report of the State Lunatic Asylum, previously quoted, p. 16.

mains to be mentioned ere I close this meagre chronicle of its history; I allude to the founding of a great library of works on medical jurisprudence. The members of the Society, obliged to search more or less deeply into the various questions forming the subjects of their papers and discussions, looked around in vain for most of the authorities to be consulted. There was no accessible medico-legal library in the State. That left by the late Dr. Beck was too remote to be of any service, and the various libraries of this city, whether scientific or miscellaneous, contained few works on medical jurisprudence, apart from the standard modern text books. To the task of forming a library of every important medico-legal treatise extant in the modern language, the Society now addressed itself, prompted thereto by the appeals and endeavors of its honored ex-President, Mr. Clark Bell. The idea of such a library originated, if I mistake not, with Mr. Bell, who signalized his able and successful leadership of the Society by conducting it to a measurably successful issue. His exertions were seconded by professional men generally, whether members of the Society or not; and to these combined influences New York is indebted for the nucleus of what may, in time, be made one of the most perfect medico-legal libraries in America. Already the collection numbers between four and five hundred volumes in the English, French and German languages, of all sizes, from the modest monograph to the ponderous treatise, not to speak of its many valuable periodical contributions to current medico legal literature.

The Medico-Legal Society of New York was still in its infancy when there arose a similar organization in the metropolis of France.* The relations of the two have been friendly from the beginning; their mutual influence has been most salutary, and, so far as is practicable, their forces are joined for the achievement of the end dear to both—the advancement of Medico-Legal Science. To further this end, and to bind the two Societies together, by exchange of courteous acts, their respective Secretaries conduct a correspondence

* The American Society was organized in July, 1867; the French in February, 1868.

on topics rleating to their common aims and labors, their, publications* are interchanged, and each has conferred the honor of membership upon some prominent member of the other.

One important institution of the French Society has been borrowed by its American sister, viz., a *Permanent Commission*, to investigate and report upon any medico-legal question that may be referred to it. The germ of this institution had already indeed existed in our own Society, in the shape of the Committee that so ably and conclusively reported on the testimony in the first trial of Dr. Schœppe ; but it did not assume a permanent shape until the formal organization, after the French plan, of a Commission of Experts in the Spring of 1876 ; so that, as I have said, the idea of permanency must be credited to our sister Society in France. The duties of this permanent commission are important, and in their discharge, may prove valuable to the community at large. It holds perpetual open court, so to speak, to hear, examine and decide upon any intricate, doubtful or disputed question in medical jurisprudence. The question may be whether a given stain is blood or not ; whether a given mode of death is suicidal, homicidal or accidental ; whether the statements in evidence bear out the theory of sanity or insanity ; whether other statements similarly delivered sustain an indictment for malpractice. Be it what it may, there is every likelihood that it will receive from such a commission a full and judicial investigation, one, too, that must be welcome to every court of law.

Taking, now, a summary glance ot our subject, we may divide the history of medical jurisprudence into two main periods—the remote, or pre-scientific, and the recent, or scientific, period. In the former we discern a lack of independent investigation, not by any means astonishing, since such was the characteristic of all knowledge before the rise of the spirit of free inquiry. Statements of fact were rea-

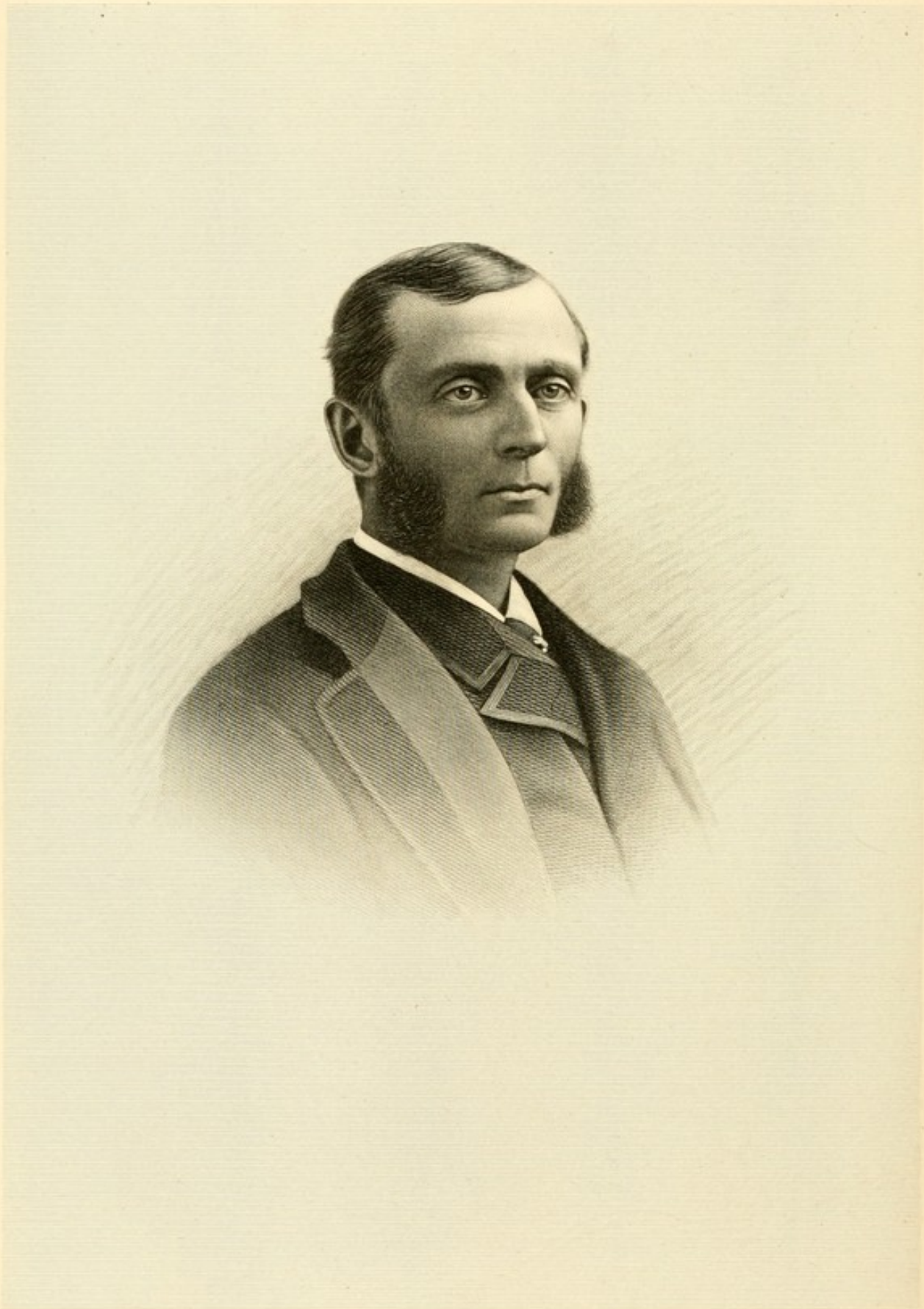
* The latest publication received from the sister Society in France is a very painstaken and able report, reviewing the first volume of our proceedings and addresses, issued together in 1874. I shall have occasion to quote from this report presently.

soned about at second hand, and accepted, if at all, on hearsay testimony, chiefly, or entirely. The somewhat exuberent growth of medico-legal literature in this period is marked by subservience to authority, and is valuable mainly as a relic of antiquity The later, or scientific, period of Medico-Legal Science begins with the great discoveries in anatomy, physiology and chemistry. Its distinguishing features are chiefly three in number ; a copious literature based upon observation and experiment ; the institution of chairs for teaching medical jurisprudence ; and the organization of societies for the discussion of living medico-legal issues, the diffusion of medico-legal knowledge and the bringing laws and court rulings into harmony with advancing medical science.* Of these three great features the United States is tolerably rich in the first, but poor in the second ; whilst, as to the last, she can claim to have founded the Medico-Legal Society of New York, the first known to the world.

I trust that in the foregoing remarks it has been apparent to you what great and salutary influence our Society has had in the practical application of medico-legal knowledge. I need lay no claim to gift of prophecy in foretelling that this

*The efforts of the New York Medico Legal Society to bring about a harmony between laws, court rulings and advancing medical science, are alluded to in such appreciative terms by a recent able French writer, that I may be pardoned for translating his remarks somewhat at length. After some allusions to the community of origin and aim existing between the Medico-Legal Societies of Paris and of New York, he continues as follows : "Our common origin is the desire for social amelioration, our end is the advancement of science, and above all of truth. The New York Society has well understood this, and of all works, that which she has undertaken, of assisting justice in the pursuit of truth, is the most difficult and embarrassing. To that Society it seemed a matter of prime importance to prepare physicians for the duties of experts in criminal trials She saw that however accomplished the medical man in his particular branch of knowledge, his purely medical information contributed but a share to his influence as an expert. In her belief, the interest of justice and society demanded that *the jurisconsult should teach the medical man what he ought to know of jurisprudence, and that for his part, the medical man should instruct the jurisconsult in what he ought to know of medicine.* (The italics are my own.) She solved the problem of this mutual education by the very nature of her organization, and so far as she has done this much she may lay claim to the honors of priority." And further on in the same paragraph he adds: "It must be evident to everyone, that only by the co-ordinate union of the scientific and legal elements, by a mutual uuderstanding, complete and loyal, between magistrates, juri ss and physicians, can respect for truth and justice be upheld." Louis Penard, M.D., *Compte Rendu des Memoirs de la Societe de Medicine Legale de New York.* Pars, 1876.

influence is destined to be widely extended in the future. In one particular alone, not to mention others, may the efforts of the Society lead to a desirable reform in this country. I hold in my hand a table compiled by the courtesy of the Bureau of Education, at Washington, in answer to some questions of mine, and the facts it reveals show a very unsatisfactory condition of medico-legal instruction in the United States. Among the 54 medical schools, of all sects, from which returns were obtained, only 40 give instruction in medical jurisprudence ; and of this 40, no more than 9 provide instruction by full and regular courses of lectures, the remaining 31 contenting themselves with occasional lectures only, numbering from 4 to 20 in the year. This is an unsatisfactory announcement to make at the end of a century of medical jurisprudence in this country, and may be, a chilling termination to this address ; but the Medico-Legal Society of New York, which has already done so much for medical jurisprudence, may see in it a reason for renewed exertions a stimulus to fresh efforts in the cause of a science for whose welfare it has in a measure become responsible.



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Geo. M. Beard.

George M. Beard, A. M., M. D.

Dr. Beard, the son of a Congregational minister, was born in Montville, Conn., May 8th, 1839. He prepared for college at Phillips Academy, Andover, Mass., and subsequently entered the academical department of Yale, graduating in 1862. In college he was prominent as a scholar, writer and debater, received a prize for English composition, and the Townsend premium, and was editor of the Yale Literary Magazine. He received the degree of M. D. from the College of Physicians and Surgeons in 1866, and shortly after became associated with Dr. A. J. Rockwell in the study of nervous diseases. Dr. Beard, in conjunction with the writer, embodied the results of their experiments in a series of articles in the New York Medical Record entitled "The Medical Use of Electricity with Special Reference to General Electrization as a Constitutional Tonic, etc."

These were extensively copied in foreign journals, both in England and on the continent, and with other methods and ideas, have long been incorporated into scientific literature and, as has been conceded, mark epochs in this department of science. In 1868 he translated from the German and edited with an introduction, "Tobold's Chronic Diseases of the Larynx," and in the following year he published a large and popular work for the family entitled "Our Home Physician." In 1871, two treatises called respectively "Eating and Drinking" and "Stimulants and Narcotics;" in 1872, in connection with the writer, he published an exhaustive

treatise on "Medical and Surgical Electricity;" in 1873 he published in the same manner a monograph entitled "Clinical Researches in Electro-Surgery," and in 1874 a monograph on "Legal Responsibility in Old Age" based on the author's researches into the relation of age to work. In the same year he founded a semi-annual journal, "The Archives of Electrology and Neurology, and also began the study of psychology and pathology of delusions, explaining the performances of the Eddy brothers and Brown, the mind reader; in 1876, a work on "Hay Fever" based on original researches and advocating the nerve theory of that disease; in 1877 a monograph on "Scientific Basis of Delusions," being a new theory of Trance and its bearing on Human Testimony; in 1880, a practical treatise on "Neurasthema;" in 1881, a popular work on "Seasickness," in which he first advocated the bromide treatment, and also in the same year a popular treatise on "American Nervousness, its Causes and Consequence." During the last year Mr. Herbert Spencer while in this country, in an after-dinner speech which excited wide spread interest, repeated many of the ideas first enunciated in this work. In a pamphlet termed a "Scientific Coincidence" written by Dr. Beard and which was issued some days after his death attention is called to this singular circumstance. In 1882 he published "Trance and Muscle Reading," and in the same year a monograph entitled, "Psychology of the Salem Witchcraft Excitement and its Practical Application to events in our own time, including the cases of Guiteau and Cadet Whittaker;" in 1883 a work on Sexual Neuresthema, and in the same year a monograph entitled, "Medical Education and the Medical Profession in Europe and America."

Dr. Beard not only gave much attention to psychology of delusions, but he was the first to clearly and prominently demonstrate that the facts of the phenomena of these delusions, belong to psychology, and should be brought into science exclusively by psychologists. Previously these phenomena had been studied, so far as they had been studied at all, by physicists, chemists, astronomers, general physiologists and psychologists. His doctrine was that delusions

were to be overcome not by direct attack, but by organizing in science the phenomena that give rise to them. In his work on "Psychology of Witchcraft" he has given definitions of religion, delusion, superstition and science, and has explained their relations to each other In his works on "Neuresthema" and "American Nervousness," he has given attention to facts and phenomena that had hitherto, with some exceptions, been thought unworthy of scientific attention.

In the words of one who knew him well, there are "in this great human caravan, keeping pace to the march of time, three classes of workers; first and by far the largest in number, those who merely plod, and follow in routine courses, or walk in circles; second, those who strive to make these routine courses and these circles easier and straighter by chipping off a little here and filling a little there, lessening the grade at this point, and increasing the momentum at that; and third, embracing a very small fraction of this great multitude, those who are the advance workers who do what is sometimes called "original work," who live beyond or in advance of their time.

He early became a member of the Medico-Legal Society of New York, taking from the outset an active interest in its labors. He attended the Inaugural meeting in January, 1883, a short time before his death. He was one of the founders of the National Association for the protection of the Insane, and of the New York Society of Neurology and Electrology. He read a paper before the Medico-Legal Society entitled "Legal Responsibility in Old Age, based on Researches into the Relation of Age to Work," also one entitled "Problems of Insanity," another on "Hypnotism."

During the latter part of his life he gave much attention to Medico-Legal studies, contributing much that is valuable to forensic literature.

He was among the foremost alienists of our country, and his reputation was wider extended, especially abroad, perhaps, than that of any of his contemporaries of his years.

The work for which Dr. Beard was best fitted and most peculiarly adapted, and in which, had he lived, he could

have been most useful, was doubtless that of lunacy reform.

It is questionable if any of our American alienists had studied the subject more deeply and thoroughly than had Dr. Beard. He had mastered the English system, both in its legal and practical aspects, and was thoroughly familiar with continental systems.

He recognized the changes needed at home in our laws and asylums, and his death will be felt as a severe blow to that body of thoughtful minds who are now engaged in the consideration of the problems of this interesting question.

In no society, however, in this country, was his loss more keenly felt than in the Medico-Legal Society of New York, in the success of which he took the liveliest interest.

He was largely instrumental in inaugurating the Medico-Legal Journal, to which he pledged the support of his influence and his pen—but his voice is hushed and his pen laid aside forever. Although cut off in the prime of his manhood he has left, in his printed works, an enduring monument, *Sic itur ad astra.* A. J. R.

A NEW THEORY OF TRANCE

AND ITS

BEARINGS ON HUMAN TESTIMONY.*

By GEORGE M. BEARD, M. D.

For ages there have been observed a group of symptoms connected with the nervous system, which, under various confusing and contradictory names, have been at once the wonder of the masses, the refuge of delusions, the scandal of law, and the opprobrium of science. Among the more or less incorrect and meaningless terms that either superstition or science has applied to these symptoms, I may specify as especially prominent, somnambulism artificial and spontaneous, mesmerism, animal magnetism, hypnotism, Braidism· catalepsy, ecstacy and biology.

You will agree with me—all thoughtful minds of our time do agree—that the solution of the mystery suggested by these vague and one-sided phrases, is one of the most important problems of science ; since it is of interest, and of the highest moment, not for itself alone, but on account of its relations to physiology and pathology in general, to the philosophy of popular delusions of all kinds and all ages, from the Delphic oracles to Brown's mind reading—and, what is perhaps most important of all, on account of its bearings on the principles of evidence, the estimate of human testimony which we are to consider this evening.

It is with the conviction that the problem presented by this

*Read November 1st, 1876.

subject can be, and is substantially solved, that these intricate and widely extending phenomena can be unified, harmonized, reduced to a science, and brought under the rule of law, that I have chosen trance as a subject for the present address.

In using the word trance to include the real phenomena represented or suggested by the above mentioned terms, I am not guilty of introducing a new term—for it is indeed a very old one—nor of wresting it from its original significa tion, for it has always been popularly used in the sense in which I here use it, although no one before me, so far as I know, has given it a full and formal definition.

It is necessary to understand, at the beginning, that in order to master the subject of trance, we must use deductive as well as inductive reasoning—in other words, we must reason from generals to particulars, drawing our conclusions from principles already established, as well as from particulars to generals. It is neeedful to insist on the validity of deductive reasoning, for without it no progress can be made in this branch of science ; without it, indeed, it is a useless attempt to study subjects of this kind at all.

It was not long ago that an accomplished friend of mine, a physician, publicly remarked that it seemed to him the wiser course for scientific men to let these subjects alone, not to attempt their solution. He based his objections, perhaps unconsciously, on the fact of the impossibility of solving these problems by the inductive method.

Those who share these views may be reminded that all the sciences in their infancy, astronomy, physics, physiology, and chemistry, have been opposed on substantially the same ground ; these things, it was claimed, cannot be understood by the human mind ; therefore let us join ourselves to the idols of our ignorance, and let them alone. Grand as have been the results of the inductive method of investigation, as organized by Bacon, it has not displaced, and never will displace deductive reasoning—and it is a fact of vast encouragement for the future of human knowledge, that there is now beginning to be a slow reaction in favor of a right use of the thinking, as well as of the observing faculties in scien-

tific research. Clear evidences of this reaction are found in the writings of nearly all the leaders of scientific thought to-day. Mr. Mill, in his logic, says truly that the progress of the future must be made along the line of deductive reasoning; and, quite recently, Haeckel, in his "History of Creation," has protested in most vigorous language, against what I may call the tyranny of the senses. The success of the inductive method has been so brilliant that we have lost our heads; we have looked so long at one side of the subject that it has not seemed possible that it could have any other side. With the triumph of the telegraph and railway constantly before our eyes, as reminders of what the modern world owes or thinks it owes to Bacon for inductive investigation, we forget that, after all, the greatest contributions to human knowledge have been largely the product of deductive reasoning. Newton's discovery of the law of gravitation was a deduction, not an induction; and, indeed, astronomy itself is throughout a deductive science.

The Darwinian theory of natural selection, and, indeed, the whole law of evolution, of which Darwinianism is but a single factor, is simply an enormous deduction, which, so far as it becomes accepted, must be regarded as a far greater achievement than that of Newton's. Indeed, the Baconian philosophy of induction is itself a deduction.

The objection may be pressed that deductive reasoning is liable to error, and the oft-cited prediction of Lardner that no steam vessel could ever cross the Atlantic, may be brought to mind; but all this is but to say that it is human to err, for in all methods of seeking the truth, there may be mistakes. But if any comparison were to be made between the fallacies of these two modes of reasoning, it would be found that where deduction makes one blunder, induction makes a thousand; and for this reason, if for no other, that everybody can use, and does use induction, not only in science, but in all the ordinary affairs of life, while deduction can be mastered only by a few, since it requires, in all its higher phases, a power of reasoning that is but rarely possessed or acquired. Difficult as it is to find those who can make correct scientific observations, it is incomparably more difficult to find those who

can make just scientific deductions. On this subject Buckle remarks: "For one person who can think, there are at least a hundred persons who can observe; for an accurate observer is no doubt rare, but an accurate thinker is far rarer." Liebig, discussing the same subject, says. "Our attaching too high a value to the mere fact is often a sign of a want of ideas."

So far as the senses are concerned, they deceive all of us every hour and every moment. The delusion that the senses, any one, or all of them, can be trusted, is, with the advance of culture and the development of better notions of the principles of evidence, fast dying out. With the man whose mind is trained to right conceptions of the worth and worthlessness of human testimony, seeing is not believing, but doubting; for what is all human science but a correcting of the errors, and a supplementing of the defects of the senses. The sight is, on the whole, the best of the senses, but in civilized lands only fools trust it. The savage, casting his eyes upwards, sees a blue arch filled with lights but a little way off and rolling around the world; the astronomer sitting in his study, deduces that these lights are worlds millions of miles away, and that the earth rolls around the sun. It is not the retina, but the brain behind the retina, that really sees, or in Goethe's language, the eye sees what it brings the means of seeing. If any man wishes to blunder, let him but open his eyes and believe what he thinks he sees. Indeed, the much-lauded habit of exclusively trusting the senses, and of making all knowledge a matter of induction, is not, as some believe, a result of the Baconian philosophy, but is rather a slowly passing away survival of savagery. Every barbarian is an imperfect Baconian.

The infinite errors that enter the brain through the doors of the senses, can be, in a considerable degree, guarded against, and reduced to a minimum, by the proper use of the reasoning faculties. All experts in any branch of science, or of art, consciously or unconsciously correct the defects and uncertainties, and positive errors of the senses, by the trained intellect made especially watchful by long study and practice, in special lines of investigation. In all important and difficult matters, therefore, the only testimony that is of

any value is expert testimony ; if that cannot be obtained, we have no way of knowing anything of the subject.

In the special topic under consideration, the truth is only obtainable by experts and expertness. This most difficult department, in its present state of development, is only mastered after years of study, and on the basis of a thorough knowledge of the physiology of the involuntary life. The non-expert, in studying subjects of this kind, is very apt to believe what he sees and hears, or thinks he sees and hears, and concludes and reports accordingly ; the expert, in the presence of the same phenomena, asks and definitely answers the question, whether the image on the retina is subjective or objective ; whether he sees all or but a part of what is needful to get the exact truth ; whether all things that are seen are seen in their due relations as to time, space and mass ; and he also tests the results thus sifted by the established principles of deductive reasoning.

The theory of the nature of trance which I have to offer, and which I now present for the first time, is that it is a functional disease of the nervous system, in which the cerebral activity is concentrated in some limited region of the brain with suspension of the activity of the rest of the brain, and consequent loss of volition. It is the prime requisite of a scientific hypothesis that it should account for all the phenomena embraced under the department to which it applies. The hypothesis that trance is a morbid state, consisting in a concentration of the cerebral force in some limited region of the brain, the activity of other portions being meanwhile suspended, seems, as I hope to be able to demonstrate, to account for all the real phenomena of this state, all its different forms and stages.

Before bringing this theory to the test of accounting for all the phenomena, a few general remarks on trance seem to be necessary ; and all the more since the current notions on this subject, among scientific men, and even among physiologists, are mostly crude, one-sided, and positively erroneous.

Trance, like other functional nervous diseases, may be induced either physically or psychically ; that is, by influ-

ences that act on the nervous system, or on the mind ; more frequently by the latter, sometimes by both combined. The special exciting causes that may induce this state are, therefore, practically infinite.

Among the physical causes are injuries of the brain, the exhaustion of protracted disease or of starvation, or of over exertion, anæsthetics, alcohol and many drugs, and certain cerebral diseases. Ordinary, sleep may act as an exciting cause, as is illustrated in the somnambulistic form of trance. Under the psychical causes are included all conceivable influences whatsoever, that may powerfully excite any emotion, or group of emotions. The majority of the cases of trance come under this head.

Trance may, for the sake of convenience of description, be divided into four varieties: the *spontaneous*, the *self-induced*, the *emotional*, and the *intellectual* trance. In strictness, these varieties may, to a certain extent include each other, and in using these terms, this fact should be borne in mind. Thus, the intellectual trance is spontaneous, although the majority of the cases of spontaneous trance are not also intellectual. The self-induced trance may be partly emotional, but it is not entirely so.

A typical form of spontaneous trance is natural somnambulism, or sleep-walking ; a term which is vaguely used by many writers to include all phases of trance, excepting those which are produced by performances of mesmerizers, which are called cases of artificial somnambulism. In sleep-walking, the cerebrel activity, which, during ordinary sleep is more or less lowered throughout the brain, is suddenly concentrated in some limited region ; the cerebral equilibrium being spontaneously disturbed through the subjective action of dreams, the subject, under the dominion of this restricted region of the brain, the activity of the rest of the brain being suspended, runs or walks about like an automaton, with exaltation of the sense of touch often, and of the co-ordinating power, as is shown in their capacity for balancing in difficult and dangerous positions, and climbing on heights where in the normal state he would not venture. Other senses may be sealed entirely, as in other forms of trance.

Under self-induced trance are comprised those cases where the subject can bring himself into this state at will, either suddenly or gradually. Of such subjects it may be said that they will to lose their wills ; or it would be nearer the truth to say that they voluntarily put themselves under influences where the involuntary life becomes supreme.

All genuine trance preachers and speakers—and many of them are genuine—represent the self-induced variety. I have studied the case of a famous trance preacher, who tells me—and his statements are in accordance with the laws of trance, although he does not at all understand the true philosophy of his own experience—that when he began to go into this state, the first symptom was only a thrill, or electric shock through his arm, then with more practice the whole arm became convulsed, then the whole body, until in time exaltation of the faculties of imagination, and of language, were developed, and he became a most successful performer before audiences.

The current slang of spiritualistic circles in which mediums are described as "fully developed," or "partially developed," or as "developing," has this basis of truth in it that it oftentimes needs practice to acquire the habit of readily, and at will, entering the trance.

There is such a thing as the habit of being entranced. After one has been a number of times thrown into this state by any procedure or influence—whatever it may be—he seems to grow more and more susceptible to the influence, of that special procedure or influence, and will be entranced by it quite likely, while many other equally good or better methods fail.

Some have a habit of falling into a trance spontaneously at regular intervals ; there is, indeed, in this disease, the same periodicity oftentimes that has long been observed in neuralgia. Somnambulism, or sleep-walking, is a form of trance that may become periodic.

One of the most noted writers on spiritualism has been accustomed to induce the trance by starving himself, or, at least, by living very low. This is a good method, but it is slow and painful, and may be harmful ; for the brain, through

want of just nutrition, gets into a chronic pathological state, when its equilibrium is readily upset—in nautical language it is thrown off the centre, the imagination becomes abnormally active, and the subject is oftentimes borne to heaven where he sees and hears many wonderful and beautiful things, and reports accordingly. The visions of Swedenborg, and of Mahomet, possibly—for it is difficult to obtain any detailed information in regard to the heroes of distant ages that will bear scientific scrutiny—as well as the ecstacies of many of the mediæval saints and recluses, and the bright experiences of the dying everywhere, find here their pathological explanation.

Under emotional trance are included cases that are caused by the so-called mesmeric performances, or through the feelings of fear, wonder, reverence and expectation, however excited. The majority of the cases of trance come under this head; for every one is endowed with these emotions, and in the greater part of the human race they are the controlling elements in character—they are especially active and irritable in the young, and in those who have passed out of childhood, and have not yet reached full manhood or womanhood; they are present, however, in force at all ages, (for in this respect all men are women and all women are children), and in the strongest and most intellectual minds they are apt to be in constant and usually successful rebellion against the authority of reason—any influences, therefore, that excite any, or all, of these emotions, may be regarded as exciting causes of trance.

The emotions through which trance is most likely to be excited, are fear, reverence, wonder, and expectation. Among the numberless conditions or circumstances, that are liable to excite these emotions, it is needful to specify but a few that are of a representative character, are most familiar and most readily verified, such as standing on a height, or on the track as a train is approaching, or a sudden alarm of fire in a crowded building; the imposing impression made by a pretense of supernatural power, as when it is claimed that the dead are raised, or that departed spirits are communicating with their friends, or that the sick are instantly healed, and

similar miracles; and, lastly, and of least importance, the performances of so-called mesmerizers or hypnotizers, as passes to and fro, manipulations, concentrating the attention on some fixed point or bright object, as a button or nail in the wall, drinking of water believed to be magnetized, and so forth.

The one fact common to all these conditions is, that they exert some one or several emotions—fear, or wonder, or expectation—to such a degree that the activity of the rest of the brain is suspended while these emotions are abnormally active, and consequently the will loses control, and the subject acts automatically in response to external or internal suggestion, doing the very things he wishes to avoid doing, and unable to do what he most desires. If on the edge of a height, he becomes dizzy, and may fall; if fearful of being crushed by the approaching train, he cannot move a step; if seated in a *seance* with supposed mediums, he sees and hears whatever he is told to see and hear, as flames, or light, or sound, and recognizes the faces of departed dear ones in a rubber mask, a pocket-handkerchief, or in a drop of water.

The almost universally held belief that the mesmeric form of emotional trance is caused by some force or fluid (animal magnetism) passing from the body of the operator into the body of the subject, is as far from the truth as any view on any subject possibly can be; and the fact that this view is held not by the masses alone, but probably by ninety-nine out of a hundred physicians and scientists, shows how one-sidedly this whole subject of trance has been studied.

In producing this form of trance, indeed, the presence of the operator or magnetizer, so-called, is not needed at all; any influence or circumstance that the subject expects will put him into the trance is liable to produce that effect, particularly if, as is usually the case, the emotions of wonder and fear are at the same time acted upon. Subjects in the mesmeric trance are under the control of the external suggestions of the operator, as expressed by voice or manner (not of his silent, unexpressed will, as some imagine), because they go into the state with that expectation; otherwise the operator has no power over him. But there is no need of

any operator at all. Not much less erroneous and one-sided is the conclusion of Braid, who, in some respects, has studied the subject with intelligence, that fatigue of the eyes and power of attention by looking upward intently at some bright object—as a key or pencil—is specially important.* The fact is that it makes no difference as such what you do to produce mesmeric trance ; it makes no difference who does it ; it is a *subjective* matter entirely, and all depends upon the emotions of the subject, what he fears, expects, or wonders at. True enough that a professor of vast fame succeeds in a greater proportion of cases, but that is because the subject expects great things of him, and all the needful emotions are created in his presence. The operator may be an absolute ninny; but if the subject believes in him, that is enough. He may make the passes up or down, or crossways, with his fingers, or with his hands, or he may make no passes at all. he may sit perfectly still ; his presence is not necessary ; he may be a thousand miles away ; he may have been dead and buried a thousand years ; he may never have existed ; if the subject strongly believes he exists, or that he is raised to life, and expects or fears that he may have the power to put him into a trance, entranced he will become. Let any one with some reputation as a mesmerizer request the audience to stand up, stating also that in a few moments they will be mesmerized; and in ten minutes let him permit those who can to sit down, and it will be found that perhaps one out of ten cannot sit down ; they are thoroughly entranced ; fixed to the floor, and are ready to do whatever they are told to do. If the statue of the mesmerizer had been on the platform instead of the mesmerizer himself, and if it could have spoken, and the audience could have believed in it, the results would have been just the same. One famous operator used to simply say to his subjects, "Sleep," and they passed into the trance.

In one of the most successful experiments of this kind that

* These attempts to induce trance with keys, pencils, and so forth, will fail almost always, even with persons psychically and physically predisposed to go into that state, if the subject does not know or suspect that something of the kind is to happen. I have proved this repeatedly by a thorough series of experiments with the patients of Demilt Dispensary.

I ever witnessed, a number of individuals were seated side by side on a platform before an audience, and were simply directed to put one hand on the wrist of the other, close their eyes, and control their thoughts. In fifteen minutes at least one-third of those who tried the experiment were entranced.

To intellectual trance belong the extreme cases of what are commonly characterized as absent-mindedness ; a state which is quite distinct from simple mental attention. The popular term absent-minded, as applied to those who become so absorbed in thought that they are unconscious of what is going on around them, and perhaps respond automatically to external suggestions or influences, is, in view of the theory of trance here advocated, a happy one ; since it expresses, with partial correctness, the real state of the brain during an attack of that kind. A large portion of the brain is active, and until aroused, is insensible to surroundings, and thus responds mechanically. The biographies of illustrious thinkers are filled with instances, some of which are probably correct, of this form of trance. Thus Walter Bagehot says of Adam Smith, the great political economist, that his absence of mind was amazing. On one occasion, having to sign his name to an official document, he produced, not his own signature, but an elaborate imitation of the signature of the person who signed before him ; on another occasion, a sentinal on duty having saluted him in military fashion, he astounded and offended the man by acknowledging it with a copy of the same gestures.

In these intellectual trances, great thoughts have been without doubt, evolved, that would have been impossible to the brain in its normal state.

The hypothesis I have here presented must, if true, account for the actual phenomena of trance in all its form and stages however induced. If there be a single fact of trance that is positively inconsistent with this hypothesis, then the hypothesis has no value. It can be shown by this hypothesis all the facts of all forms and phases of trance are explained, unified and made harmonious ; nay, more, that only by this hypothe-

sis, is it possible to give any unity or solidarity to the phenomena of this state.

First. This hypothesis accounts for the loss of the control of the will and the automatism of trance, which is the first observed, and most distinguishing feature.

In his normal state man is, to say the least, nine-tenths a machine. As I have elsewhere said, the involuntary life—that which acts without the will, or in spite of the will—is the chief fact in human life, and in human history. It is the side of humanity that in some most important relations has been least studied, and in which are to be made very largely the physiological discoveries, and the advances of the future.

Comparing life to a wheel, as Dr. S. S. Laws has done, the voluntary functions may represent the narrow hub, while the involuntary functions are represented by all the area between the hub and the periphery. In this little inner circle lies all human responsibility and all the vast influence of punishment or reward ; in all the rest of his functions, man is as much an automaton as a tree or a flower. Now, in the trance, this little inner circle, of what we call volition, is encroached upon by the involuntary life, and in the deeper stages is entirely displaced by it. The fully entranced person has no will ; what he wishes to do he cannot do ; what he wishes not to do he does ; he is at the mercy of an external or internal suggestions. Every one who has had the nightmare knows what this feeling of powerlessness is, for the more he tries to run the firmer he sticks. A mesmerized subject, when he tries to do anything against the command of the operator does just the opposite.

This hypothesis of the concentration of the cerebral activity in a limited region, accounts for the displacement of the will in this way. The will may be defined as the co-ordinated activity of all the faculties of the mind, including, in general terms, the perception, the emotions and the intellect Cerebro physiologists will agree—all questions of phrenology or cranioscopy, or minute specializations of functions aside—that the brain does not act as a unit, but that different parts are the organs of different faculties. When the cerebral activity is harmoniously diffused, as in the normal state,

through all the different regions, the man is said to be under the control of the will. When the cerebrel activity is concentrated in some limited region of the brain—say that devoted to the emotions, or that devoted to the intellect, the activity of the rest of the brain being suspended for the time—the man would have no will ; he would be under the control of that group of faculties ; he would be a conscious living automaton, as a fully-entranced person always is.

Secondly. The hypothesis explains why trance is an abnormal state. It shows that it must be a morbid pathological condition, and also shows in what this morbidness consists. The man whose mental faculties are mostly suspended, who has no will, but is under the control of some single faculty, is surely in an abnormal state, and in this respect the popular idea is correct. It is a functional disturbance relating only to circulation and innervation, and not causing structural changes, although it may be caused by structural cerebral diseases, and not ordinarily permanently affecting the health in other respects. The liability to trance, like the liability to various other functional disturbances of the nervous system, does not conflict with general good health and longevity.

If it seem a doubtful thing to class absent-mindedness, or a state of being "frightened to death" under diseases, it must be considered that, strictly speaking, there is no arithmetically defined line between health and disease, but that, as Allbutt has well observed, pathology is but the shady side of physiology.

Thirdly. This hypothesis explains the difference between trance and ordinary sleep, which in some respects it so much resembles Sleep is a normal state, a partial cessation of the activity of all the faculties, a lowering of the activity of all the regions, but not a suspension of the activity of any except the will, which, as we have seen, is simply a co-ordinated action of the faculties. When a person who is sleeping gets up and walks in his sleep in other words, passes into the somnambulistic form of trance, the change that takes place in the brain is this : while sleeping, the activity of all the faculties was lowered; on going into trance the activity

of all the faculties becomes suspended, and the entire cerebral activity is concentrated in some one faculty, or limited group of faculties.

Trance differs from ordinary sleep in the following features :

1. The performances of the trance are logical, coherent, and consistent ; while dreams are filled with extravagances and absurdities, which to the sleeper seem entirely proper. By the hypothesis of trance here presented, we should expect that the dreams acted while in that state, however exalted they might be, would be restricted and coherent, for they must arise in a limited region of the brain, and are not like the dreams of ordinary sleep, the scattered and confused products of all parts of the brain

2. In trance some of the senses may be perfectly sealed. The loudest noises are not heard, the most fragrant odors are not observed, and there is no power of taste. While some of the senses are thus utterly closed, others may be greatly exalted. On the other hand, the soundest sleepers are awakened by loud noises, or by sufficiently irritating the sensitive nerves. This sealing of some of the senses is perfectly clear, if we allow certain regions of the brain to be entirely inactive. In sound sleep all regions of the brain are active, although far less so than in the waking state, but in no region is there complete suspension of activity. The explanation of the exaltation of the faculties will be given subsequently.

3. Trance subjects are capable of responding to suggestions offered by a second party, or from any external source, and become consciously obedient to those suggestions. Sleepers present no such peculiarity; they respond to external suggestions addressed to the senses, but not consciously or coherently. The entranced person, according to this hypothesis, is a living, active personality, more active in certain directions than when in the normal state ; and yet he is only a fraction of his normal self ; consequently he is, or may be at the mercy of any external suggestion that is offered. He may not be able to resist the external suggestion, as of the so-called mesmerizer, for example, but he re-

sponds consciously and consistently through that portion of the brain that is active, and without coming out of the trance. If one in ordinary sleep becomes fully conscious so as to respond intelligently to external suggestion, he wakes up.

4. In some forms of trance there may be divided or double consciousness. The subject, on coming out of the trance, has no recollection of his experience while in it. On again entering the trance, he resumes the experience of the previous attack where it left off, as though no active life had intervened. If he have a habit of entering into the trance at certain times, he really leads two quite distinct lives. In sleep there is no such continuity of existence, from one nap to another. The explanation of double consciousness is referred to under another head.

In strictness, trance is not sleep at all; it is rather another form of waking life, over which the will has little or no influence. It does not rest one, rather it is exhausting, at least in some of its phases, and with reason, for the mental and physical functions are oftentimes exalted.

FOURTHLY. This hypothesis explains the phenomenon of dual life and double consciousness, which has been regarded as one of the greatest and most inexplicable mysteries of trance.

In trance—even in the most profound instances ever observed—there is probably always consciousness at the time, but it is not always or usually remembered consciousness. On awaking, as on awaking from ordinary sleep, the dreams that may have been active and numberless, fade as a cloud; possibly not even a glimpse of them may be caught and held before the mind long enough to become a permanent and recollectible impression during the normal state. But on resuming the trance state, the exalted functional activity of the region of the brain in which the cerebral force is concentrated, is able to bring these impressions of the previous attack of trance, forgotten during the intervening normal state to consciousness, and thus the subject carries on an independent trance life, just as though there had been no intervening normal state. On returning to the normal state the cerebral force being again diffused through the whole

brain, is insufficient to enable the subject to recall the experience of the trance, but quite sufficient to enable him to recall the experiences of his previous normal state. Thus he leads two lives—the normal life and the trance life—and they are independent of each other.

That very great excitements, or unusual experiences or circumstances of any kind, may bring to consciousness impressions supposed to be forgotten, is illustrated in the history of every person at all susceptible; even a little trip in the country, a walk in the woods, a sea voyage, may have this effect in a most interesting way. Extreme illustrations are the well-known experiences of the drowning, or of those in great peril of any kind. A physician at one time under my professional care, told me that he was once thrown in his carriage off a high bridge. In the short interval between leaving the bridge and reaching the ground beneath, forgotten events of his life rushed before him, as in the case of drowning men.

It would also be consistent with this hypothesis, if the subject in the trance state should recall not only previous attacks of trance, but also the general fact of having been in the normal state; for in the normal state the whole brain is active, and in the trance state that portion in which the activity is concentrated would be able to bring to consciousness the acts of the normal life in which that same portion of the brain must have participated. The case of Felida X., recently reported by Dr. Azam, of Bordeaux, France, appears to have been of this character.* In this case the first attacks appeared in the fifteenth year, and at first lasted for but ten or fifteen minutes. The first year, but about one-tenth of her life was passed in these trance attacks; after the lapse of sixteen years her life was about equally divided between trance and health, until finally the former encroached on the latter, until she passed nearly all the time in trance. Through all these years of dual existence she always forgets, during her normal life, the experiences

* A translation by Dr. Tucker of Dr. Azam's report, appeared in the *Journal of Nervous and Mental Disease*, for October, 1876.

of the trance; nothing seems to be competent to bring them into consciousness, but the concentrated and exalted activity of the trance itself.

The case of Miss Reynolds, of Pennsylvania, the details of which were published in 1860, was a type of this feature of trance. On coming out of her first attack, which was at the age of eighteen, she forgot all about her former life, and she had no consciousness of previous existence; she did not know her father, or mother, her brother or her sister. After five weeks she fully recovered her normal state, and with it her memory of her life previous to the attack of trance, but not of the trance itself. For years she alternated between trance and health, leading two distinct lives. In trance she was gay and lively, full of fun and fancy, and fond of social life; in the healthy state she was sedate and pensive, almost to melancholy, slow, though sensible in her intellectual operations and apparently destitute of imagination.

In these cases of dual life the trance life is the most brilliant and active in certain features, as by this hpothesis it naturally would be. In a case under the observation of the late Dr. J. R. Mitchell, a young girl in trance life was quick, energetic, and witty, and vivacious; in her normal life she was slow, indolent and querulous.

FIFTHLY. The hypothesis explains the difference between the deeper stages of trance and death, with which trance is sometimes confounded.

With this hypothesis of the pathology of trance before my mind, I have been accustomed to illustrate the difference between ordinary sleep trance and death, by pointing to a chandelier of gas-burners. When all the burners of the the chandelier are fully lighted, that is, the normal waking state; when all of the burners are turned down low, but not turned out entirely, as usually is the case in public halls, before the opening of entertainments, that is ordinary sleep; if I turn out entirely all the burners except one, and that one, as often happens, flames all the more brightly from increased pressure, that is trance; if all the burners are turned out entirely and permanently, that is death. The only hold on life, which the deeply entranced person has, is through

the activity of a limited region of the brain, through which feeble movements of the heart are sustained, the body being, in other respects, motionless. The popular belief that deeply entranced persons are liable to be buried alive is correct, but, fortunately, mistakes of this kind occur but rarely.

One person, it is said, was laid out to be buried, all the preparations for the funeral having been made, of which he was fully conscious, and yet he could not at first speak, or cry, or wake, or move. By a desperate effort at the last moment, he succeeded in slightly moving one of his thumbs; the movement was observed and he was saved, and in time came out of his trance.

In the famous case of the late Rev. William Tennent, of New Jersey, a severe illness—some form of fever—was followed by profound trance, which so thoroughly simulated death that the time for his funeral was appointed, and the people were gathered in attendance. At this juncture, his physician, who was also a special friend, insisted that he should not be buried at that time, because a tremor in the flesh, which had been observed when the body was laid out, still continued. A brother of Mr. Tennant became impatient at this suggestion, exclaiming: "What, a man not dead who is cold and stiff as a stake!" The suggestion of the physician, however, prevailed, another day for the funeral was appointed, and the people went away. For three days and three nights the doctor worked over his patient, trying, if possible, to find some other symptom of life than the mere tremor in the flesh, but failed. Again the friends appeared at the hour assigned for the funeral, and again the physician plead for time; at first for an hour, then for a half an hour, and then for a quarter of an hour. At the last moment Mr. Tennent opened his eyes. His mouth was pried open, and through a quill liquid nourishment was conveyed to his stomach, and by degrees the patient recovered; but at first he could not write nor read, and was only able to pronounce monosyllables. It was a considerable time—more than a year—before he gained the recollection of his past life, and his acquirements were fully restored to him. During

his slow recovery he took lessons in reading and writing, as in his childhood. It is stated by his biographer that the return of his memory was marked by the sensation of a sudden shock in his head, as he was reciting Cornelius Nepos. He clapped his hand to his head, and then it seemed to him that he had read that book before; the subsequent return of his recollection of his past life, though gradual, was perfect.

After his recovery, Mr. Tennent stated that the three days in which he had appeared lifeless seemed to him not more than ten or twenty minutes; and during that time he seemed to be transported, under the guidance of a superior individual, to heaven, where he saw an innumerable host of happy beings surrounding an "Ineffable Glory;" he was able to hear their songs and their hallelujahs, and he was conscious of joy unutterable.*

In cases of this kind the heart probably beats very feebly, and not always with sufficient force to be detected by ordinary auscultators.

Rosenthal, of Vienna, records a case of trance in an hysterical woman. She was declared dead by her physician. When Rosenthal saw her the skin was pale and cold, the pupils contracted and not sensitive to light, no pulse could be detected, and there was relaxation of the extremities. Melting sealing-wax, dropped on the surface, caused no reflex movements. When a mirror was held before the mouth no moisture appeared. It was not possible to hear any respiratory murmurs, but in the cardiac region a feeble intermittent sound could be just detected on auscultation. The patient had been apparently dead for thirty-two hours. On examining the patient with the faradic current of electricity, Rosenthal found that the muscles of the face and the extremities contracted. After twelve hours of faradization, she recovered. Two years afterwards she was alive and well, and told Rosenthal that about the commencement of the attack she knew nothing, but that afterwards she heard people talk about her death, but she was powerless to help herself.

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* Life of Rev. William Tennent. New York, 1868.

SIXTHLY. This hypothesis explains the exaltation of some of the physical and mental faculties in trance, and depression of others

The exaltation of the physical and psychical faculties in trance cannot be questioned, but is readily demonstrated; and by this hypothesis receives an explanation that is both lucid and complete.

Representing, for the sake of comparison, the quantity of cerebral force in all parts of the brain by one hundred; if the activity of three-fourths of the brain is suspended, then the remaining one-fourth may be four fold more active than when in the normal state. That there should be such a concentration of cerebral force in a limited range of faculties, is in harmony with every day observed facts. Thus the intellect increases in vigor in any direction under exercise up to a certain point, and through over exercise becomes fatigued. In the brain are the centres of thought, of muscular motion, and of general and special sense. It would follow, therefore, that some one or several of the senses, or some one or several of the mental faculties, or some one or several groups of muscles might be exalted in activity, with entire suspension of the activity of other senses, faculties and muscles, according to the region of the brain in which the concentration of activity takes place. There is, therefore, no mystery in the frequently observed, though sometimes disputed fact, that entranced subjects can raise with ease weights which in their normal state they are unable to move. Mesmerized subjects sometimes exhibit this power. Persons entranced through fear, as by an alarm of fire, have been known to take up a stove and carry it out of the house; the next day they cannot, to save their lives, carry back that stove. The co-ordinating or balancing power may be so much exalted in somnambulists that they can climb without harm in most dangerous places. A case in point is related by Dr. Brown-Sequard, of a lady in Paris, who, every Sunday, at ten o'clock, was seized with ecstatic trance; and during the attack would get on a bed, put her toes on the edge, take an attitude of prayer, and offer supplications to the Virgin Mary. In this position, impossible to any one in a

waking state, she would stay for a long time, fixed as a statue, her chest moving, her heart beating, and her lips uttering sounds, but the rest of the body absolutely still. The exaltation of the time-telling power—which sometimes passes for second sight—has the same explanation as the exaltation of other faculties. Likewise the nerves of general and special sense are all liable to be greatly exalted in this state; the feeblest whisper in a distant room may be readily heard, and one can read by a dimmer light than is usually needed. The sense of touch may be so delicate that when the sense of sight is sealed, the subject can find his way from room to room without injury; and it is claimed may, in some cases, recognize the presence of another person near at hand, by the temperature alone, even where there is no physical contact.

These exaltations of the normal senses are the bases of many of the popular and professional delusions relating to "second sight," "clairvoyance," "thought reading," and the like. By this hypothesis also any of the mental faculties should be liable to be exalted. Observation shows that not only the imagination, but the reasoning faculty and command of language are oftentimes greatly enlivened in their activity in this state, as the performances of trance preachers illustrate. Weak minded men and women, who in the normal state think little and say less, are sometimes able, when entranced, to speak continuously, and almost if not quite eloquently, and with slight apparent effort. While there has been much exaggeration of the originality and value of these trance speeches, yet it can not be denied that they are, with all their wildness of fancy and repetition, and frequent senselessness, far beyond the capacity of the same persons when not entranced. On returning to the normal state they may be utterly stupid or commonplace; their cerebral force, when diffused through the whole brain, is unequal to even rapid and sustained small talk.

The converse of exaltation, depression of some of the senses and faculties of the mind, directly follows from this hypothesis of concentration of cerebral activity; those senses and faculties that belong to the entirely inactive regions of

the brain, must be for the time practically dead, as is found to be the case in some forms of trance. Thus the sealing of some of the special senses and general anæsthesia, making it possible to perform without causing pain certain surgical operations, are accounted for.

Seventhly. This hypothesis explains all the familiar physical symptoms of trance, such as flushing of the face, fixity of position, sighing respiration, accelerated pulse, involuntary convulsive movements, and marvellous and numberless hysteroid sensations.

The effects of trance on the pulse and respiration, and on the circulation in general, are what would be expected from the known inter-dependence of mind and body. The quite recently established fact of the existence of definite centers or muscular motion in the brain, however the fact may be interpreted, is of great significance in its bearings on this subject, since it shows clearly why convulsions so frequently accompany trance. The aphorism that I have elsewhere laid down, that when we think we move, was based on our knowledge of the existence of these centers of muscular motion, in that portion of the surface of the brain, that is regarded as the seat of some of the mental faculties, and was first suggested to me while repeating the experiments of Hitzig and Ferrier in the electrical irritation of the brains of animals.

These convulsive movements in trance, as in hysteria and epilepsy, belong to the lighter phases, or to the coming in and going out of the attack; in the deeper stages the muscles are motionless.

Whether the entranced subject walks about or remains fixed and immovable, probably depends on the nature of the dream that arises in the portion of the brain the activity of which is exalted.

The vague nervous sensations that often accompany the early and lighter phases of trance sensations, as of electric shocks, of heat or of cold, of crawling or creeping, or twitching, are in harmony with what the neurologist every day observes in various temperaments where the brain in whole, or in part, is excited. In very many persons the

simple expectation, that their symptoms are to appear, is sufficient to bring them in full force.

EIGHTHLY. This hypothesis accounts for the illusions and hallucinations of trance.

Illusions, delusions, and hallucinations are, as is established, the products of cerebral activity, and are frequently the symptoms of some abnormal state of the brain. There is no proof that any other part of the body than the brain, as the spinal chord or nerves can originate hallucinations, any more than there is proof that any other part of the body can originate the higher modes of conscious thought—all the facts and arguments that serve to establish that the brain is the organ of the mind in health, also establish that it is the organ of the mind in disease. For while automatic acts, as nursing and so forth, may be manifested by brainless infants, and while the spinal cord clearly contains centres of reflex action, yet there is no proof that any conscious thought, of the *higher* kind at least, attends the activity of these reflex centres, any more than in the familiar automatic movements of plants. The hallucinations of trance—the visions of heaven and other innumerable fancies—must then, like dreams, and all mental operations, whether coherent or incoherent, have their seat in some part of the brain; and, according to this hypothesis, their existence, their coherency, and their extreme activity are all explained.

Illusions and delusions may arise in brains that are in a normal state, through the necessary deceptions of the senses, but many of them are, in part at least, of a transient character, and are in various ways corrected; but in trance both the false perceptions (illusions), and the false conclusions from what is perceived (delusions) are permanent, and in many cases are immensely more absurd than ever arise in the normal state.

NINTHLY. This hypothesis accounts for the relation of trance to its admitted predisposing and exciting causes.

By this hypothesis any influence that tends to overthrow the cerebral equilibrium, to disturb the balance of innervation, would be likely to be a cause of trance; experience shows that this is actually the case.

The predisposing, like the exciting causes of trance, are both physical and psychical.

One is physically predisposed to trance, so far forth, who inherits, or has acquired a nervous system generally sensitive and impressible. One is psychically predisposed to trance who is mentally unbalanced through excessive and disproportionate endowment of imagination and emotion. One who is powerfully developed in reasoning and thinking qualities, and is badly deficient in observing, practical faculties is so far forth predisposed to the intellectual form of trance. The best subjects are those who are predisposed, both physically and psychically, who have sensitive organizations, and unbalanced, ill-trained minds.

A typical subject for emotional trance, especially the mesmeric form, is the average shop-girl; she is usually delicate in body, feeble in mind, or rather, all that is in her of mind runs to emotion, and that little is but half matured; it is almost as easy for her to become entranced under exciting causes as it is to laugh or cry. Persons of this mental calibre and immaturity, of either sex, are predisposed to trance, even when physically they are very strong. Trance is not, however, as many suppose, the peculiar gift of certain temperaments. It is the property of the human race. All persons are liable to become entranced, just as they are liable to become paralyzed or epileptic, although all do not suffer in this way. All persons are not predisposed to the same form of this disorder; one can only be entranced through the intellect, another through the emotions; one person can only be frightened into this state; one needs the presence of a medium, another of a mind reader, another of a clairvoyant, and another of a mesmerizer; another of a magnetized letter, and another still of one who performs miracles of healing by the laying on of hands. Mr. Grimes, who has had much experience with the mesmeric trance, and who is accustomed to direct his subjects to stand still with closed eyes and folded hands as a means of exciting the emotion of reverence, says that he failed with every one out of forty military officers at West Point, while just across the river, among the operatives, the same process was very success-

ful.* This is easy to understand from what has already been stated in regard to the predisposing causes, but it would be an error to infer that those officers were not capable of being entranced. If they should all sit in a circle around a table for half an hour or more, with the expectation that some strange things would develop, very likely some of them would become carried away, and, by unconscious muscular motion, would move the table, or perhaps they would feel sensations like electrical shocks through their bodies, or they might go into convulsions, or might experience wonderful visions, hearing the voices and seeing the faces of loved ones.

TENTHLY. This hypothesis accounts for the periodicity of trance in certain cases.

It is the nature of all functional nervous diseases—neuralgia, sick headache, hay fever, inebriety, and some forms of insanity, to appear more or less periodically. It may be said, I think, that the majority of cases of spontaneous trance are periodic. Several of the cases reported in this paper to illustrate various points, it will be observed, agree in this element of periodicity, though widely differing in other features. The famous case of the French sergeant, for example, is a striking illustration of the periodicity of this disease. According to Dr. Mesnet's report, the attacks of trance in this case came on after a hemiplegia, which followed a wound in the head received at Sedan. From one to two or three days of every month are passed in this state, into which he enters spontaneously and instantaneously. While in trance the sense of touch is much exalted, the sense of sight appears to be limited to those objects with which he is brought in direct relation, and is only excited

* Mr. Grimes has recently published a work, entitled "Mysteries of the Head and Heart," the latter portion of which especially is commanded to the attention of those who are interested in these themes. Mr. Grimes is almost the only writer on trance who has had sufficient originality and mental force to see more than one side of it. But, like Dr. Carpenter, and most other writers on these subjects, he fails to see all sides, and he makes the mistake which is fatal to the scientific study of trance, of conceding the possibility of thought-reading. This serious mistake results from the studying the subject inductively instead of deductively; it is, indeed, as I shall show farther on, an inevitable mistake from that false method of reasoning.

into activity automatically by the sense of the touch ; all the other senses are sealed. The excessive activity of the sense of touch appears to supply the place of the other senses in a measure, so that he eats, drinks, smokes, dresses, and undresses, and retires to bed as in his normal state ; but throughout mechanically responds to external suggestions.

Here, as it would seem, I might close the case, with all the real phenomena of trance accounted for, unified and harmonized by this hypothesis of concentration of activity in a limited region of the brain. It may be opposed to all this process of reasoning, that no one has ever seen with his eyes the brain thus concentrating its force during an attack of trance ; but it must be remembered that only exceptionally can scientific hypotheses be verified by actual sight. Even in the material world the seen is but a fraction of the unseen. No man ever saw the waves of light ; no man has ever seen gravity ; these universal forces are studied only through their phenomena, by means of which we frame hypotheses of the law of gravitation, and the existence of a luminiferous ether. In the realm of physiology and pathology, the chances of verification by actual sense perception are more rare than in astronomy or physics. Only by deduction can we arrive at any idea of any functional disease whatsoever, or of the relation of mind to brain.

It is essential to the validity of a scientific hypothesis that it accounts for all the phenomena, and that it be the only hypothesis that will account for them. The supernatural hypothesis of trance, which is the one that has been most generally entertained, even if there were no other argument against it, must be dismissed at once, as soon as it is found that the phenomena can be fully explained by natural causes.

Although we have the authority of the best writers on the principles of science, Whewell and Jevons, for accepting an hypothesis if it be singly and solely competent to account for all the phenomena ; yet the best hypotheses, as it seems to me, will bear even severer tests ; they will shed light on other and allied phenomena, and will point to new and previously unknown phenomena, for which they will also ac-

count. This hypothesis of the nature of trance will bear, in a manner, this severe and supplementary test. It puts us in a position to predict, from our knowledge of the mental and physical characteristics of an individual, whether he will or will not be likely to become the victim of any form of trance. This hypothesis is also of material assistance in studying the automatic functions of the brain and the relation of automatism to responsibility, which just now is the battle ground of science.

This hypothesis also assists us in obtaining a general idea of the nature of sleep, explaining in a general way the philosophy of dreams, the cause of their incoherency, their relation to trance and the cause of loss of will in that state.

Thousands, if not millions, of pages have been written on the will; all metaphysics is complicated by discussions on, and obscured by ignorance of the nature of this element of the mind. In the light of this theory of trance, the will is not any single, or special, or separate faculty, but the co-ordinated action of all the faculties; and the reason why, in trance, the will is displaced is that the activity of a considerable portion of the faculties is suspended. There is scarcely a problem in psychology that is not simplified by this ex-explanation of the nature of the will, as all who are familiar with the literature of the subject will perceive.

In regard to the other popularly alleged phenomena of trance,—clairvoyant, or second-sight power, or the existence of a sixth sense, by means of which the subject is able to see around and through the world, and into other worlds, or to tell time through the back of the head, or to read with closed eyes, or to see through opaque objects, or to discover lost persons and property, or to reveal the past, or to prophesy with precision, to communicate with spirits of the departed, or to raise the dead—in regard to all these claims, and every claim allied to them, I may say that there are not, and never have been, and never can be any such phenomena. How do we know that phenomena of this kind never have existed and never can exist in the trance? It is not a matter of opinion, or of the *ipse dixit* of any man, or of any number

of men ; it is a fact capable of absolute proof that no phenomena of this kind have ever appeared in the world in any human creature, in trance or out of trance.

How do we know this? Surely not through inductive reasoning, which is the method usually resorted to in studying this subject. No amount of inductive research will ever advance this branch of science one inch. Suppose that there are a thousand clairvoyants, and mediums and mind-readers who profess to have these powers, and that by the investigation of some competent expert (and none but an expert can conduct investigations of this kind), it is shown that none of them are justified in their claims, that all of them are intentional or unintentional deceivers, what have we found? Simply nothing. We leave off where we started. How do we know that the next clairvoyant does not have the power that she claims to have? How do we know that even these one thousand may not have had the powers they claim just before our investigation, or just after? You say that exposures of this kind diminish the probability that any one has these gifts. Very true, but in science we are not to be content with a low degree of probability when we can get certainty, and on this subject we can get certainty. I have no sympathy, therefore, with the habit, honored though it may be by the endorsement of some of the greatest names, from the committee of the French Academy down—of offering large sums of money to those who will display these marvelous gifts. No plan conceivable could be more unscientific than this. Two years ago, a friend of mine, much interested in these themes, and uncommonly successful in the study of them, remarked to me, "I have laid by a few thousand dollars, the results of labor and saving ; I will give it all to any one who will read the mind of another." He gave me authority to publicly use his offer, which I did not do, for the reason I have given. I observe that offers of this kind find no takers, for no one ever was endowed with any of these divine powers ; but the fact of their non-acceptance is negative evidence merely, and leaves the subject where it found it.

The true way, the only way to settle this question, is through deductive reasoning, by the application of this law of nature, devised from the experience of all authorities in physiology—namely, that no human being ever has any faculty different in *kind* from that conferred on the human race in general. The law is of universal application, and may embrace all species of living things; but for our purpose here it is sufficient to limit it to the human race. The difference between Socrates, Newton, Shakespeare, and Milton, and the lowest type of society is a difference of degree only; all the mental faculties are common to all. None of the real phenomena of trance, as above detailed, differ from those that are common to the human family otherwise than in degree. When, therefore, we hear these wondrous stories of second-sight and thought-reading, though endorsed, as they oftentimes are, by the ablest and most honest scientific men of the world, we need spend no time or force in investigating them; deduction proves their falsity without any examination.

We can, if we choose, and are competent to do so, verify and illustrate our deductions by exposure of those making these claims, but let us beware of making these exposures with the idea of proving anything. With the masses of the people, who are moved by their instincts, these exposures count for much, I admit; but science has no need of them, and save in exceptional cases, when incidentally they lead to positive and original contributions to science, as in the case of the Fox girls, the table lifters, and Brown, the mind-reader, derives no aid from them in settling this great question.*

* Lest I may be accused of inconsistency, I may say that whatever I have done during the past few years in the way of detecting and exposing mediums, clairvoyants and mind-readers has been, not for the purpose of ascertaining the truth or falsity of the claims made by these performers and their advocates, since that question is, as I have stated above, settled definitely and forever by deductive reasoning, but partly in order to solve some questions relating to the psychology of jugglery—a most instructive and much neglected subject—and partly also out of regard to the weaker brethren who are unable to employ deductive reasoning, and can only be taught through what, in some way, appeals to the senses. These exposures are, in strict logic, no absolute disproval

Likewise the common objections that these delusions do no good and much harm, and add nothing to the treasury of human knowledge, have no place in science, however useful they may be in practically dealing with the people.

In regard to all these claims, it may be said that in all cases whenever the hand of an expert touches them they vanish into air. Non-expert human testimony of vast proportions, in favor of all these claims, crowds our libraries and our newspapers; but the testimony in favor of witchcraft, of alchemy, of magic, and of astrology is incomparably more imposing; but non-expert human testimony in matters of science is, as you are aware, of no value, and no force of numbers can give it any value. No process of addition can make knowledge out of ignorance; a million ciphers are worth no more than one cipher. A strong boy standing on the shore tries to throw a stone across the Atlantic, and fails; a million of boys come to his aid, and each one tries to throw a stone; all combined shall not help the first boy, nor come much nearer to reaching the other shore, though they may toil forever.

The cures of disease wrought on trance subjects are oftentimes genuine cures—the result of mind acting on body, as

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in the abstract of the claims made by those who are exposed; but their influence with the people, even with physicians and scientific men, is, as I have found by experience, enormously greater than any scientific method of treating the subject possibly can be. Thus, in the case of the Eddy Brothers, who contracted the habit of raising the dead in immense numbers, in an out of the way hamlet of Vermont, deductive reasoning was, to one who knew how to employ it, amply sufficient, without any attempt at special verification, to disprove the claim; and yet there were in this country thousands of persons, many of them of the highest intelligence, and some of them of scientific distinction, who, up to the time of my published exposure, were not a little uneasy in mind in regard to what was alleged, on excellent average testimony, to be performed there.

Likewise, in the case of Brown's mind-reading—in some respects the most original and remarkable performance connected with delusions—comparatively few, even of physicians and physiologists were able, at once, to grasp the true, though somewhat complex explanation which I gave—unconscious muscular tension and relaxation on the part of the subject—although the theory was confirmed by careful and repeated experiments; but the incidental comparison of the mind-reading seances to the "learned pig" exhibitions, in my letters to the *Tribune*, was more effective in bringing the trickery into contempt, as I have various reasons for believing, than any published reasonings or explanations.

I have proved by a systematic series of experiments wherein even without the aid of trance, I accomplished, and have, in my paper on the subject before the American Neurological Association, pointed out in detail the way for others to accomplish most remarkable and oftentimes permanent results in serious cases of disease—results which formerly were regarded as miraculous.

An excellent parallel to the superstitions connected with trance is found in the perpetual motion delusion. For centuries the belief that perpetual motion was attainable, dominated in the civilized world, and, like the delusions of second sight, clairvoyance, and so forth, was most active in the intelligent classes; thousands upon thousands of machines have been devised, which, by their inventors, and by their friends, were supposed to have solved the problem, and no amount of inductive investigation could ever have availed to settle the question, since but a minority of claims could be exposed by expert skill, and in every direction new claimants were appearing, and likely to appear. Not until physicists were able to demonstrate deductively through the law of the correlation and conservation of force, that perpetual motion was impossible, was the delusion dispelled. At the present time all classes of perpetual motion are disallowed by physicists without a moment's examination. It would be as much a violation of the established and unvarying laws of nature, for one person to have any faculty different in kind from those belonging to the race in general—such as second sight, or clairvoyance, or mind-reading, or prevision, or retrovision—as for the sun to rise in the west instead of the east; by legitimate deductive reasoning the one claim is as conclusively disposed of as the other.

It was only by deductive reasoning that the delusion of alchemy was gradually overcome The belief prevailed in Europe that the baser metals could be turned into gold; the ablest minds were influenced by the delusion; even Sir Isaac Newton, it is claimed, did not escape the infection. Throughout Europe, indeed, alchemists were for centuries as common and as annoying as clairvoyants and mind-

readers are to-day; and induction was equally powerless against them, and for the same reason. As chemistry passed slowly out of the territorial into the organized stage, it became possible to prove deductively that baser metals could not be turned into gold, and claims to that effect ceased to be examined. In his one department of astronomy, Sir Isaac Newton was perhaps the greatest master of deductive reasoning that the world has ever seen; but in studying alchemy he was but a layman, a non-expert, and blundered accordingly; and in this respect, if in no other, his example has been imitated by a number of eminent judges, physicists, and naturalists of our day.

Another excellent parallel drawn from physiology is found in the belief, in this country at least widely prevalent, even among the educated classes, that oculists can take out the eye in a living patient, clean it, and put it back again. Thousands of individuals of general intelligence are positive that they have seen, with their own eyes, this operation performed, and many of them would be willing to swear in court to that effect; patients themselves, as an oculist of reputation, Dr. Matthewson informs me, are positive that this operation has been performed on themselves. To meet this delusion by exhaustive investigation, by exposing, in detail, every claim of this kind that is, or has been, or will be made in the world, is manifestly beyond human power; and if such exhaustive exposures had been made, the possibility that such an operation could be performed might still be urged. Only by deductive reasoning—by the recognition of the absolutely established physiological law that it is as impossible to detach the eye from its nervous, vascular, and muscular connections, and restore it to those connections, not only unharmed, but benefited by the procedure, as is claimed, as it would be to cut off the head and put it back again on the living man—can this delusion be successfully met.

Those who have followed my argument thus far will find no difficulty in accounting for the fact, that the trance has for so long a time been a refuge and a hiding-place for the

world's great impostors. The essence of a delusion is ignorance, and in all ages the delusions of mankind have sheltered themselves in the darkness of the unexplained phenomena, and have retreated as fast as light is let in upon them. As astronomy rose astrology sank ; as chemistry was developed, alchemy died away ; as medicine became something of a science, witchcraft lost its vitality ; the trance and the automatic side of human nature have been so full of mystery that in them the delusions of our time have made their last stand, from which they are already beginning to retreat.

It is the belief of the wisest men of our time, that there is a scientific substratum to delusions. This belief is well founded ; there is a scientific substratum to delusions, and it is found in the subject under consideration, and it is for that sake alone worthy of the study of all physiologists who are competent to make themselves masters of this branch of inquiry.

Those who fully understand the nature and symptoms of trance, as I have here described them, and the involuntary life of which trance is, so to speak, the triumph and culmination, may remain assured that they have possessed themselves of all that is genuine and important in witchcraft, in clairvoyance, in spiritualism, in mind-reading, and in animal magnetism, which latter is the mother of all modern delusions, being, indeed, to our century what witchcraft was to the fourteenth.

In the light of the theory here proposed, it will be seen that trance has a two-fold interest, scientific and practical—scientific in its relations to both physiology and pathology, and practical in its bearing on the principles of evidence, as obtained through human testimony.

There are various reasons why all that portion of logic, as taught in our colleges and schools of law, that treats of human testimony, must be radically reconstructed, and when this reconstruction is made, as it surely will be, it will be found that much of what is called history, is subjective rather than objective, originating in the brain rather than in

external nature; and it will be seen that not an inconsiderable portion of our libraries can be laid aside and forgotten without detriment to the cause of truth, and with large advantage to those who wish to make the wisest use of time. The necessity for thus reconstructing the principles of evidence is based, in part, though not entirely, on the fact that all persons are liable to be entranced, and that when in that stage their own statements of what they experience is of little or no value.

On legal medicine, trance has a direct and most important application, and in four ways:

First. Testimony as to crimes committed under circumstances of great excitement. Arson, murder, and even theft, especially burglary, may cause or be attended by so much of fear or terror on the part of those who witness them, either sufferers or by-standers, that their testimony, as to what occurred, may become of slight value. The possibility that witnesses may be entranced through the emotion of fear, is worthy of fair consideration in all cases of this kind where details are testified to and insisted on, and where there is important conflict of evidence between witnesses.

Second. Testimony relating to sudden accidents, attended with fatal or serious consequences.

The value of testimony often brought before coroners' juries is impaired, and quite frequently neutralized altogether by the fact that the excitement of sudden accidents tends to entrance those who are directly concerned; and thus the attempt to fix responsibility in such cases so often miscarries. A typical instance is found in the disaster that occurred to the yacht Mohawk, in New York harbor, last summer. It will be remembered that this yacht was suddenly capsized, and thrown completely over while getting under weigh, one afternoon, off Staten Island. Commodore Garner and his wife and several others were drowned. The captain was quite generally blamed, and there was a strong desire among the people to have him indicted for criminal negligence. The testimony given on the trial before the coroner was far from being satisfactory to the impartial

minds, and the captain was discharged. In cases of this kind newspapers are violent, and call for the blood of those whom they suppose to be unpardonably negligent; but coroners' juries, following their intuitions or their feelings of compassion, are unwilling, as a rule, to convict on the testimony usually brought before them; and in this respect they are right, although they may not know why. Their impulses and their intuitions are wiser than the logic and eloquence of editors and preachers. Imminent peril and unexpected disaster, threatening or injuring life, are likely to excite trance, and thus to diminish the value of the testimony of the parties concerned, to such a degree, that we should pause before inflicting punishment. In the case of the Mohawk, the squall was so sudden, and the capsizing of the yacht so quick, and the position of those on board so perilous that any attempt to ascertain just what transpired may as well be abandoned. We shall never know what occurred after the squall struck the yacht, in sufficient detail, to punish any one.

There is no doubt that persons in responsible positions sometimes become entranced as peril approaches, and thus they are liable to take precisely the wrong course, and to do that which they especially wish to avoid, like a mesmerized subject. A few years since, while returning from Europe, our steamer collided with a sailing vessel, under these circumstances. It was a starlight night, and the sailing vessel was sighted at least fifteen minutes before the moment of collision, and was not lost sight of during that time. The vessel was coming across our bows. Under right management on the part of the officer of the deck a collision would have been impossible. If we had stopped, if we had backed, if we had kept on our course, if we had turned to the port, all would have been well. There was but one way in which it was possible for us to run into the sailing vessel, and that was by turning to the starboard and chasing her. That course the officer of the deck took, and succeeded in running into and knocking the masts out of the sailing vessel. There there was no suspicion of intention; there could have been

no motive. The officer in charge was not over-experienced, probably became entranced, and did just what he terribly wished to avoid doing.*

In cases of this kind, the responsibility, legal or moral, belongs to those who allow men of insufficient capacity or experience to take positions for which they are not adapted. For what the man does or does not do at the time he is not criminally responsible. In those who have the right capacity for a responsible station, and whose experience in that station has been large, the liability to become entranced through fear is reduced to a minimum.

Third. Testimony relating to alleged crime or wrong deeds committed by entranced persons.

* On this occasion was also illustrated, in a most interesting way, the power of fear to entrance large numbers of individuals simultaneously, causing them all to see precisely what they feared to see. After the collision, the passengers from the cabin and steerage rushed on the quarter-deck, many of them overcome with terror, and nearly all of them supposed that our steamer was seriously injured. The sound of the falling spars, unspeakably dismal in the darkness, the roar of the wind, which seemed, as usual, to rise at the critical moment, the difficulty and awkwardness that attended the slow lowering of the boats on the dashing waves, the shrieks, and prayers, and cries of the passengers, all combined to make the emotion of fear the master of the occasion. In the height of the excitement, the cry went forth that our steamer was stove in, and that the bow was sinking. Straightway all eyes were turned toward the bow, and to every eye it seemed to be sinking. I shall never forget how that bow gradually lowered in the darkness, as I anxiously gazed upon it; and yet, so far as I am able to judge, I was more angry at myself for not having taken some other steamer than fearful of shipwreck. Probably all, or nearly all the passengers would, if necessary, have testified in court, under oath, that the bow of our steamer gradually sank before them on that night; and yet the bow did not sink, the steamer was uninjured. For the circumstances of that accident substitute the pretense of mystic or supernatural power, through the agency of an oracle, a seeress, a sorcerer, a necromancer, a witch, a conjurer, a juggler, a magnetizer, a medicine man, a medium, a clairvoyant, a mind-reader, or a repository of animal magnetism, or ordic, or psychic force; for the excitation of the motion of fear, substitute the excitation of the emotions of wonder, reverence and expectancy, combined with fear, and we are in a position to estimate the value of the literature of delusions.

The day before the burning of the Brooklyn theatre, I lectured on this subject in that city, and remarked that an alarm of fire was one of the best exexciting causes of trance. The confirmation of this view the following day was of a most remarkable and unusual character. Probably the majority of those in the theatre were more or less entranced; some being unable to move, others unconscious of what they did, and unable to tell what happened or what they saw or heard. How animals are entranced through fear is shown by the conduct of horses when stables take fire; by the experiments of Czermak with crawfish, hens, frogs, and so forth; and by the ease which snakes charm birds, and draw them helpless within easy reach; but in perilous circumstances masses of men are little or no better than animals.

It is quite rarely that subjects in any form of trance are accused of committing crime while in that state, for this reason, mainly, that the commission of crime requires, usually, the exercise of the will; although, as in some forms of insanity, the will may be irresponsible. The automatic movements of entranced subjects, whether called forth by external suggestion of any kind, or of a subjective origin purely, can rarely lead to positive crime; although they may accomplish some form of injury. It is conceivable that a mesmerized subject might, under the influence of external suggestion, strike a blow that would injure some one; but there could be no deliberate, sustained attack, with a view to injure. Again, the very suggestion of crime, or serious evil-doing of any kind, to a mesmerized subject, seems to have the effect to restore the equilibrium of the brain, like a physical jar, or knock, or push; and he comes out of the trance, at least sufficiently to be able to resist the suggestion. Of the large number of cases of trance I have seen, I do not recollect any instance of evil doing of any kind. Mr. Grimes, who has devoted his life to the practical study of the subject, declares that subjects, even when fully under the influence of the operator, and ready to act according to the suggestions he gives, will not do an indelicate thing. Say to a young man who has gone into a mesmeric trance, with the belief that the so-called operator will have an influence over him, that he is a lawyer, and the jury is before him, and he will proceed with an eloquent, if not logical plea; tell him that he is in an orchard, and that the ground is covered with fruit, which he may pick up and distribute to the audience, and he will do as suggested; hand him a broom-stick, saying that it is a lady, and he will put his arms around it; give him a brick, and tell him that it is a baby, and he will hug it; and yet, if that same young man, while in that state, at the mercy of the operator apparently, be requested to expose his person, he would at once refuse, the suggestion acting perhaps as a means of bringing him out of the trance.

In the case of Tilton *vs.* Beecher, it was claimed privately

by the counsel for Mr. Beecher (if newspaper reports are correct), and publicly by the committee appointed by Mr. Beecher, that Mrs. Tilton was entranced at the time she signed some of her contradictory documents. Dr. Corey of Brooklyn, who has had much experience with diseases of the brain, testified before the committee, according to their report, that the conduct of Mrs. Tilton could be explained on that theory. It is conceivable that so simple a movement as the signing of one's name to a false document of terrible import, might be automatically made by a mesmerized subject, at the suggestion of the person whom she supposed put her into the trance. There is, however, no published evidence that Mrs. Tilton was in a trance at the time referred to, and no certainty, if she were in that state, that she was in a condition to respond in detail automatically to the suggestion of any one. Granting that she was entranced through a combination of physical weakness and mental excitement, which is possible, the suggestion that she commit the great crime of charging unjustly a great crime on another, would have been likely to have brought her out of the trance.*

Fourth. Testimony in the trial of those who, under pretense of going into trance, defraud the people.

Nothing is easier to counterfeit, after slight practice, than the early physical symptoms of trance; the closing of the eyes, the jerking of the head, the general twitching of the muscles, and the sighing respiration, can all be simulated by even a poor actor so perfectly that an expert cannot, without careful investigation, be sure of the deception. The exhaustion, on coming out of trance, is also readily counterfeited. The great majority of public clairvoyants, seeresses, and thought readers, keep out of trance, and while they pretend to go into it, entrance their visitors through the emotions of wonder and expectation, causing them to see what they are told to see, hear what they expect to hear, and to tell them the secrets they wish to know,

* Dr. Mesnet, of France, states in his report on the case of the French Sergeant, that he has known of two cases of trance that ended in suicide.

and thus they accomplish their fraudulent purposes. I have had interviews at various times with many of the most famous clairvoyants in the country, and under circumstances where I had all possible opportunity of judging, and I have yet to see a sure case of genuine trance among them.

An expert is justified in testifying in court, first, that these impostors do not go into the trance at all, as a rule, very few of them having the power of self-inducing that state, and that those who do have that power have no use for its exercise when any fraud is to be brought about; and, secondly, that even those who can induce trance in themselves do not have, while in that state, any of the powers which they claim, as is proved deductively by the known law of physiology already mentioned. All of these persons, therefore, whenever they profess to have powers different in kind from other persons, *i e.*, to find lost persons or property, or to tell the past or the future, or diagnose disease, or to raise the dead, are guilty of fraud before the law, and when they are tried, if expert testimony is received in court, must be, without exception, convicted.

On the other hand, if average human testimony—which in this, as in all scientific matters, is vastly worse than no testimony at all—be received, these deceivers must in every case be acquitted; for in this country ten non-experts can be found to testify in their favor to one who will testify against them. It is for this reason that trials of these cases in this country have been, without exception, so far as I know, disgraceful both to science and to law. In the famous Ward case, in Detroit, for instance, where an attempt was made to break a will, on the ground that it was made under the influence of mediums, no single witness competent to testify on the subject, was called by either side, although the trial was a long one; while public mediums, whose lives are devoted to crime, (among them, I believe, Slade, just convicted in London) were called to give their opinion as experts. What would be thought of summoning some local Lucretia Borgia as an expert in a poisoning case, or some member of the Molly Maguire gang, in a case of murder.

A few years since, according to a newspaper account, a clairvoyant pretender was arrested in Bridgeport, and went through the form of a trial for deceiving a shop girl. A dozen or more shop girls were allowed to testify that the accused had divine powers, and consequently she was acquitted, and borne off amid the plaudits of the mob.

It may be objected, both to the theory and the practical conclusions, from the theory here advocated, that even granting their entire soundness in the abstract, they would, if generally understood and held, have a paralyzing influence by encouraging the sceptical spirit, both in science and in law. To this I would reply, that scepticism is a relative term merely, and rightly viewed, is but another form of belief. Strictly speaking we are all believers. We can no more avoid believing than we can avoid breathing. Superstition and science are both credulous, only that one believes the false, the other the true. Science is indeed but a higher form of faith; it knows what to receive and what to reject. If the distinction between belief and scepticism be retained, it may be said that superstition is the real sceptic, ignorance is the doubter, and science the only believer. Facts, such as are here urged, are therefore the strongest of all bulwarks against scientific and popular scepticism, against that most baneful of all forms of infidelity so prevalent everywhere, but especially in this country, that rejects everything except average human testimony, that makes the emotions the masters rather the servants of reason, and in seeking for objects of its faith, insists only on one condition, namely, that they be untrue.

As regards trance, there is required no better proof of the need there is of studying it, and of reducing it to a science, as in the present essay I have attempted to do, than the fact that up to the present moment the tendency has been, even among physicians and physiologists, to reject the real and demonstrate symptoms of this state—such as loss of will, automatism, double consciousness, and exaltation of the faculties, and to accept as genuine the impossible claims of clairvoyance or second sight.

If it be claimed that the application of this theory of trance to law, though ideally right, will be practically impossible, I find my reply in the fact that our courts of justice are already acting upon these principles, and with good results. For a long time now it has been the custom to call experts in cases of suspected poisoning and insanity, and yet every time a lawyer summons an expert he abandons Greenleaf, who, in his very ably written chapter on the principles of Evidence, as introductory to the Harmony of the Gospels, places honesty as the first qualification for a witness.

One reason, though not the only reason why experts are called in cases of insanity, is that the evidence of the senses, as such, is beginning to be regarded as of little value. Everybody can see the insane, but only a few can see them with expert eyes.

It will now not be a very long step for the law to take to embrace in full the suggestions I have offered, and to accept the principle that in matters of science average human testimony as such, is absolutely worthless. To do so they must throw overboard the principles of evidence as taught not only in books and schools of law, but in all our courses on logic and metaphysics, and in our colleges and schools everywhere, and, as assumed by all who attempt to reason on any subject whatsoever; they must throw overboard the metaphysician, Thomas Reid, who, in his text-book on the intellectual powers of man—long time an authority in Europe and America—uses these words: "An upright judge will give a fair hearing to every objection that can be made to the integrity of a witness, and allow it to be possible that he may be corrupted; but no judge will even suppose that witnesses may be imposed upon by trusting to their eyes and ears; and if a sceptical counsel should plead against the testimony of the witnesses that they had no other evidence from that declared than the testimony of their eyes and ears, and that we ought not to put so much faith in our senses as to deprive men of life and fortune upon their testimony, surely no upright judge would admit a plea of this kind. I believe no counsel, however sceptical, ever dared to offer

such an argument; and if it was offered it would be rejected with disdain." They must throw overboard Phillips and Greenleaf, Edward W. Cox, the eminent English lawyer, and legal author, who even declares that if the senses of honest and intelligent observers are not to be trusted, we must close our courts of justice.

These authorities which I have quoted—not as uttering peculiar views on this subject, but simply as representing the current notions of the world—will be, are, indeed already being thrown overboard, for in this direction, as in so many others, human instinct is wiser than human reason; even as I write the cable brings the tidings that the justice before whom the trial of Slade is conducted, has decided that on the accused rests the burden of proving in court that his trickery is wrought through the aid of supernatural beings. This view of the justice is not the correct one, according to the ideal presented in this paper, but it is probably the longest step ever made in the direction of that ideal, for it implies an abandonment of the custom of settling these questions by the testimony of the dupes of the dupes of the deceivers. If the testimony of scores of honest persons, including some of the ablest scientific minds in the world—who believe that Slade is aided by supernatural powers, in other words, is a doer of miracles—should be allowed to have great weight in his favor, as in this country it certainly would, he must surely be acquitted at once; for it is not yet fully recognized that only experts are competent to deal with these subjects, and it is not generally known that seances of this kind are the best of all exciting causes of trance; so powerful indeed that only rare and peculiarly organized minds can at first resist them, and that only after long and special study of the phenomena of the nervous system in health and disease, can any one even begin the investigation of this department of science. It is one symptom of trance that one does not usually know that he is entranced, and will swear that he is in his right mind, as the intoxicated man will swear that he is sober.

Just now, in the present infancy of this subject, it would

be difficult to try these cases in court by expert testimony, for competent experts are very rarely found. In England, Dr. Carpenter, who has labored so hard, and, in some respects, so successfully in this department of science, is yet so far out of the way as to concede the possibility of thought-reading; and admits that he could not see through the very cheap and coarse and transparent trickery of Slade, which any man can do who has two hands, two feet, a limited audience of scientific non-experts, and a conscience sufficiently seared.

All the sciences of the world have passed through the stage in which the subject under discussion is now passing. We smile when a committee of editors, lawyers and clergymen are extemporaneously appointed to decide in public whether entranced mediums have or have not divine powers granted them in their trance state; but the time has been when the great questions of astronomy, of chemistry, of physics, and mediums were settled, or supposed to be settled, in very much the same way. Sciences in their infancy are like our distant Western territories, where every one who chooses can squat down and stake out a claim.*

Observe that no new principles of evidence are introduced for application to this special subject. The first step in the development of all the sciences has always been the rejection of average human testimony. If we accept what people say, there can be no scientific knowledge of any kind. Non-expert human testimony is worth nearly as much on this subject as it is on any other branch of science; it is of little value anywhere, and intuitively and unconsciously all authorities on science reject it without examination, although they have not heretofore formulated this custom into a principle; for here, as in many other things, the intuition and unconscious reasoning has outstripped and been far in advance of our conscious reasoning. We have professed in theory, in books of logic and of law, that the senses are trustworthy, and the concurrent testimony of large numbers

* The early history of Electro-physics in the last century excellently illustrates this fact.

of honest witnesses must be accepted as truth. In practice we have oftentimes cut away from these false dogmas. Already we are slowly recognizing through our intuitions, and must in time recognize through the reason, that all science is and must be the product of expert skill, and that the first qualification of a witness in court, or out of court, is not honesty, but *competence to judge of the special matter in hand.*

In proportion as a science becomes developed into, and recognized as a specialty, through labors of experts in that branch, it is resigned to those experts, and outsiders do not presume to interfere. Illustrations by contrast are right at our very doors. The recent search for the suspected planet Vulcan was, by universal consent, resigned to astronomers, and no one thought of referring the question to committees of eminent and upright judges, or poets, or physicians; for it was assumed that in an investigation of that kind, honesty, as such, counted for nothing; and that ability, even the highest scientific genius in other departments than astronomy, counted for nothing. But when Prof. Huxley, who is one of the few authorities of the world on biology, gave a series of lectures on evolution, which only a trained anatomist and geologist could begin to apreciate, not to say criticise, forthwith, the air is darkened with replies, and criticisms, and suggestions, that almost any editor, or teacher, or professor, or clergyman feels competent to offer, with no suspicion of any special absurdity in such procedures. Why this contrast in the treatment which these two departments, astronomy and biology, receive? Partly because astronomy is an older science, has survived the attacks made upon it by theology, while biology is as yet hardly out of the territorial stage, where everybody has claims upon it, experts not having yet made it their exclusive property.*

* It may be alleged that Prof. Huxley took pains to formally attack an account of creation that belonged to a religion, and that in defense of their own belief, and from their own point of view, theologians, at least, were compelled to reply. Even allowing this privilege to theologians, it cannot be allowed to editors or critics in general; but the majority of theologians, it was observed, did not restrict themselves to the defense of the Mosaic account of creation, from the theological or philological stand-point, but brought positive criticism

The subject we are discussing is now in this state. Every eminent naturalist, or lawyer, or chemist feels that he can occupy it if he wishes, and that the world must respect his claims. They forget that the greatest blunders in history have been made by men, eminent in special departments, stepping outside of those departments, and that in all directions the truth of the aphorism of the famous magician Houdin: "It is easier to dupe a clever man than a fool," is confirmed by all who successfully study these themes. The maxim for modern research should be out of the mouth of two or three experts every word shall be established; and if they err, as they may, their conclusions are to be revised, not by the laity, but by other and better experts.

The very stupendousness of the claim here made, I may say in closing, may be a bar against its ready acceptance; but this objection is counterbalanced, in part at least, by the fact that by acting on these suggestions, it is possible for those who have adequate physiological knowledge and men-

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to bear either for or against Prof. Huxley on his own ground in paleontology, and thus by their relations to this special subject, laid themselves open to the charge of being squatters in science. It is a wise rule for scientific men, in public discussions, to religiously avoid religion; and for the simple reason that the theological explanations of natural phenomena, all, or almost all, belong to the pre-exploratory stages of science, and only by coincidence can be expected to agree with the deductions of scientific experts, and therefore do not require either rejection or confirmation. The religious idea of creation has never been adopted as an hypothesis by scientific men, since biology and geology have been in what I here call the territorial stage; it belongs, rather, to the pre-exploratory stage, and being, not a matter of science, but rather of faith, it is not for biologists and geologists to argue for or against it.

The supernatural theory of trance, which has been more generally adopted than any other, I do not here attempt to elaborately disprove, for the same reason, that it belongs to the pre-exploratory stage of this branch of cerebro-physiology; and, unlike the animal magnetism theory, has never been adopted or seriously considered by the scientific men who have given their attention to this subject since it has been in the territorial stage.

If scientific men are persuaded that the beliefs of men are delusions, the better way to destroy them is by independently building up positive truths, which, if they are needed, and the world is ready for them, will be gradually accepted, and correspondingly the delusions must disappear. The antidote for darkness is light; as the day dawns night retreats. Those who understand and accept the theory of trance here unfolded, will dismiss forever the supernatural explanation of the phenomena, just as those who understand and accept the theories of astronomy, dismiss forever from their minds all supernatural associations connected with comets and meteors.

tal discipline, to study this whole subject for themselves, so that it shall not be necessary for them to depend on the dogmatic statements of any one.

Among a certain ancient people it was the custom for any one proposing a new law to stand with a halter around his neck, so that if his proposition were displeasing to the people, they might hang him on the spot. If this custom were in force to-day, it is probable that the least possible mercy would be shown to the author of this paper; for it is not in harmony with the laws of human nature, that views like these, that have only truth on their side, and all the world's past belief against them, shall find instant and secure lodgment. It therefore becomes necessary to appeal from the present to the not very far distant future, when a limited number of competent men shall have made themselves masters of and authorities in this branch of cerebro-physiology and pathology, and shall have learned, as they surely must, that it lies within the grasp of the properly trained and properly furnished intellect, that its problems are no longer unsolvable; that, in short, whatever mysteries have gathered around it in the past exist no longer, but can be explained, and are explained in full detail, and that they can explain them.

As this rich and fertile field becomes occupied by those who alone are able to cultivate it, amateurs and laymen, and what I here call the squatters of science, will gradually retire, and the grotesque spectacle, but a few weeks ago presented at the British Association for the advancement of science, of a man reading, or attempting to read a paper on the phenomena of trance, not only without any knowledge of the subject, but without any conception of the means by which knowledge of this subject is to be acquired, or of the principles of evidence that apply to the aquisition of physiological science in general, will be remembered and cited only as a melancholy warning.*

* The above criticism applies as much to the critics of Prof. Barrett as to that gentleman himself; for in all that was said in the discussion that immediately followed the reading of his paper, and by the English press subsequently,

The delusions that the darkness connected with this subject has sheltered, will die, are dying already; they would die even if they could not be scientifically explained, for witchcraft has been dead a hundred years, although to this moment its phenomena, though fully understood, have never yet been publicly and in detail elucidated. But as the delusions disappear, the facts of trance and of the involuntary life, which together constitute the real scientific substratum of delusions, will proportionately rise in dignity and in interest.

When the Egyptian architect, as you remember, erected by the royal command, a light-house on the shore of the Mediterranean, he placed, as he was directed to do, the name of the reigning king conspicuously on the top, but in perishable plaster, which soon crumbled and fell; and beneath, on the enduring marble, the future saw the name of the architect himself. So the delusions of which we have been speaking, which have attracted so much of the world's wonder, will disappear; but in their place and out of the phenomena that gave them support will be recognized a positive addition to human knowledge, which, in time, must take its place side by side with other sciences, and become the common and permanent possession of mankind.

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the real fallacy in the procedure was, so far as I can learn, never suggested. The study of trance, which was principally the subject of Prof. Barrett's paper, is well worthy of the attention of the British Association; but only acknowledged authorities in cerebral physiology and pathology are competent to prepare, or should be suffered to read essays on that subject before any body that calls itself scientific.

Another evidence that this subject is yet far from the organized stage, is that when Mr. Crookes began his investigations in so-called spiritualism, the press urged him on, as though an eminent chemist and physicist were competent to deal with the mooted questions in physiology; and to complete the absurdity, his reports of what he thought he saw were formally replied to by other chemists and physicists, on the doubly erroneous assumption that his experiments were rightly reported, and that any one outside of experts in that branch of physiology was competent to rightly estimate and reply to them.

What Mr. Crookes and his associates did, or tried to do, with the medium, Home, will, in this world never be known. Astronomy is the oldest of the sciences, but the number of those in the world who are capable of reporting correctly and authoritatively in regard to any alleged new discoveries in that branch is very limited; and in the department under consideration, to which we are but just beginning to give serious and successful attention, it may be

doubted whether there can be found, in Europe and in America combined, a dozen individuals sufficiently expert to report with any approximation to accuracy, what transpires in experiments of this kind.

Mr. Crookes is certainly one of the most ingenious and careful of experimentalists in chemistry and physics, and fully deserves his great and increasing fame; but his experiments in chemistry and physics, even those that are original and refined, are simple matters in comparison with physiological experiments with living human beings. Assuming for the moment the substantial correctness of Mr. Crookes' report of some of the superficial facts relating to what was done in the presence of himself and Mr. Huggins, it is clear that of the six sources of error that enter into all experiments of this kind, and all of which must be absolutely guarded against if the experiments are to have any scientific value, not one was even thought of. For a physicist, or even for a physiologist to try to explain such reports of such experiments, is to be guilty of a blunder but one degree below that of the non-experts who originally made the experiments; is, indeed, to beg the whole question at issue. The position of Mr. Crookes, and of Mr. Wallace, and Sergeat Cox, in relation to this matter, is not at all peculiar or unprecedented; the stream of superstition through all the civilized ages is lined, on either side, with the battered reputations of great and good men.

A scientific gentleman of distinction once remarked to me, that he could only explain the statements of Mr. Crookes on the hypothesis of positive dishonesty. This hypothesis is at once unjust, unnecessary and unscientific; for in science everywhere simple non-expertness makes more blunders than the most atrocious dishonesty. A friend of mine, a physician of unusual ability and acquisition, whose conversation is always of great value to me—an observer of far more than average acuteness and originality—is unable to attend any performances where strange or supernatural events are claimed or expected, although a skeptic in such matters, without at once becoming entranced; and the accounts he gives of what he thinks he sees and hears in such places, are as amusing to himself as to others. It cannot be too often repeated, line upon line, and precept upon precept, that in science the prime requisite is honesty, not general ability, nor skepticism, nor genius even in other departments, but expert skill; that being absent, all else is as sounding brass and a tinkling cymbal.

JOHN CONOLLY, M. D.

John Conolly, M. D.

John Conolly, M. D., was born at the small town of Market Rasen, Lincolnshire, England, on May 7, 1794. His father was the youngest son of a good Irish family; his mother, Dorothy Tennyson, of the name and family of the present poet-laureate of England. He was educated at the small grammar-school of Hedon.

Soon after leaving school, when he was 18 years of age, a commission was obtained for him in the Cambridgeshire Militia Regiment, and he served several years with his regiment in Scotland and in Ireland. On retiring from the militia, when only 22 years of age, he married, his wife being a daughter of Sir John Collins, a captain in the navy. He then spent a year of idleness in France, residing in a cottage near Tours, in which town his brother, Dr. William Conolly, was practicing medicine: it was the cottage afterwards occupied by the poet Béranger. Here his first child was born, and it became necessary to look forward to some means of future livelihood. Resolving, after due consideration, to join the medical profession, he removed with his wife and child to Edinburgh, where he went through his student's career, graduating as Doctor of Medicine in 1821. The title of his graduation thesis, presaging the province of his future labors, was Dissertatio Inauguralis de Statu Mentis in Insania et Melancholia.

On leaving Edinburgh, he commenced practice as a physician at Chichester, but, his prospects not looking bright, he left the town at the end of a year and settled at Stratford-on-Avon, in Warwickshire. There he lived several years in fairly successful practice, doing much literary work, both in medical and other journals, and gaining a more than local reputation. Accordingly, he was, in 1828, appointed Professor of the Principles and Practice of Medicine in Univer-

sity College, London—an appointment which he held for three years. It was during this period that he published his work on "The Indications of Insanity." His three years' experience as a physician in London not having been successful enough to encourage him to persevere, he resigned his professorship, and, retiring to the provinces, settled at Warwick, which was only eight miles distant from Stratford. Here he continued his literary activity, writing many articles for the *Cyclopædia of Practical Medicine*, which he edited in conjunction with Dr. Forbes and Dr. Tweedie, and establishing and editing, in conjunction with Dr. (afterwards Sir John) Forbes, the *British and Foreign Medico Chirurgical Review*.

After he had been at Warwick six years, obtaining only a meagre measure of success, the physicianship of the Hanwell Asylum fell vacant, and he became a candidate for the office. Unsuccessful on that occasion, he was successful a year afterwards, when the office was vacant again. It was on June 1st, 1839, that he entered on his duties as resident physician and commenced his practical experience of the study and treatment of the insane. On the 21st of September of that year he presented to the committee of visitors of the asylum his first report, and in it he announced the entire abolition of mechanical restraint. "No form of straight-waistcoat," he said, "no hand-straps, no leg-locks, nor any contrivance confining the trunk or limbs or any of the muscles is now in use." The asylum at that time contained 850 patients, most of them from the different quarters of London, and suffering from all forms of chronic and acute insanity. Not again was mechanical restraint resorted to, and he was able to say, after three years' experience of its entire disuse, "that the management of a large asylum is not only practicable without the application of bodily coercion to the patient, but that, after the total disuse of such a method of control, the whole character of the asylum undergoes a gradual and beneficial change."

He resigned his appointment as resident physician to the asylum in 1843, though he acted for some time afterwards as visiting physician, and delivered clinical lectures to students

who attended from the London schools of Medicine. From the time of his resignation until his death he resided at Lawn House, in the village of Hanwell, having a consulting practice in lunacy until the last few years of his life, when failing strength compelled him to relinquish active professional work. It was by his exertions, in conjunction with those of the late Rev. Dr. Andrew Reed, that the well-known asylum for idiots at Earlswood was founded. His principal published works were: "An Inquiry Concerning the Indications of Insanity," 1830; "The Construction and Government of Lunatic Asylums," 1847; "The Treatment of the Insane Without Mechanical Restraint," 1856; "A Study of Hamlet," 1863. Besides these works, he published lectures on Insanity in the *Lancet*, and many papers at different times in the *Medical Times and Gazette*.

Soon after his resignation of his office at the Hanwell Asylum, he was presented, by public subscription, with a massive testimonial in silver, consisting of an allegorical group of figures, representing the abolition of mechanical restraint in the treatment of the insane, and with his portrait painted by Sir Watson Gordon. The honorary degree of D.C.L. was conferred upon him by the University of Oxford.

He died on March 5th, 1866, aged 71 years. H. M.

PERSONAL IDENTITY.

By James Appleton Morgan, Esq. *

Mr. Best, in his essay upon the Common Law of Evidence, remarks that the division of Circumstancial Evidence may well be termed "the Romance of the Law," and, doubtless, it is—hidden away among technical terms and legal platitudes, in lawyer's tomes in sheep and vellum, rather even than in Fielding, Dickens or Dumas—that the searcher for the marvelous will reap his richest harvest. If the range of our inquiry should take us within this romantic tract, it must not be supposed that no practical question will arise, in the solution of which the two professions of Law and Physics may well be concerned.

The law constantly deals with every element of human procedure; every phase of human life, from the grandest to the most minute, from an arbitration between two empires to the pressure of a foot-step disturbing the dew upon the grassy sward, comes constantly within its ken and scrutiny. This human procedure might, not unfairly, for our purpose, be classified into two grand divisions, namely: into matters of Life and matters of Society. In dealing with questions of Society the lawyer must study of the rights and duties of men in neighborhoods, of municipal, and commercial, and international law, and their myriad subdivisions. It is in dealing with questions of Life, that the lawyer will find the the line of his path—like the familiar proposition in geome-

* Read December 6, 1876.

try—meeting the path of the physician, the two, thence and thereafter, to form one and the same straight line of logic and of inquiry. This path we may well conceive the science of Medical jurisprudence to be.

There is in this path one similarity between the physician and the lawyer. They must both here set similarly to work; and, just like a surgeon, must have a cadaver to dissect, or a living body from which to cut an offending member, so the lawyer, in pursuing a crime against life, must first produce a body upon which that crime has been committed. This principle known as the principle of the Corpus Delicti, was fundamental in the Latin law. "Diligenter cavendum est judice ne supplicium præcipitet antequam de crimine constituerit. De Corpore interfecti necesse est ut constat." Or, as Lord Hale said, "I would never convict any person of murder or manslaughter unless the fact were proved to be done, or, at least, the body found dead," a rule which, so far as I am aware, has been invariably accepted since. In a very recent case indeed—that of the People of the State of New York against Edward H. Ruloff—it was overruled, and the prisoner found guilty of the murder of his infant daughter, although the child's body was not produced and no trace of it could be alleged to have been found (3 Park. Cr. Rep. 401). But the conviction that a dangerous precedent had been pronounced was all but universal. Hard cases make bad law. Cases constantly arise where hardship appears to be worked by a strict adherence to legal rules. But, once relaxed those rules re-assert themselves so emphatically, that we can only marvel at and admire the wisdom of the Fathers, who could, amid the circumstantiality and verbiage of individual cases, lay down rules and principles, with reasoning so clear and forcible that from their conclusions to-day there is no escape. It was not without cause that they devised restraints and technicalities, the reason of which, though seemingly lost in the mist of ages, it only needs an effort to abolish, to make apparent beyond all cavil. And so this case was speedily overruled (18 N. Y. 179) and the dictum of Lord Hale again asserted to be the

law of the State of New York, as it is of every other common law country on the globe. The term so taken from the civil law is often explained to mean "the substantial general fact of a crime having been committed," the body or the substance of the crime as distinguished from the particular form given to it by its connection with the accused, and of this substantial general fact the law will insist upon the strongest, that is to say, upon absolute evidence.

Even the confession of an accused, uncorroborated or made out of court without a showing of any Corpus Delicti, will not dispense with a body and justify a conviction, and I may here notice that it is well that it may not be allowed to do so. For although confessions might seem at first glance the best possible evidence which juries could desire, they, not unfrequently, are the very flimsiest and most unsatisfactory possible. I wish I had time to stop here to enlarge upon the demonstrated fallibility of confessions. I may say in passing, however, that there are at least sixteen well authenticated cases in the books, of individuals confessing the most heinous crimes of murder, when they have been utterly innocent of anything of the sort, except the hallucination or the motive which induced the statement. It is probably fresh in the minds of most that only last summer a German servant girl, on Third Avenue, of this city,* assured her mistress, whose little boy, a child of seven, had just died and been buried, that she (the servant) had poisoned the boy. The servant swore to her own crime and was taken into custody, and it was only when, upon exhuming the child's body and examining its stomach, that no poison was discovered, that against her own protest she was acquitted of the possibility of the crime. And later on I purpose more than a passing allusion, though in other connections, to the world-renowned Boorn case, in which—despite a self-constituted murderer's confession—the alleged victim walked into court and confronted the man who had sworn to killing him.

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* New York.

This Corpus Delicti, this visible material substance once proved, a second further step becomes necessary. This second step, in its chief phase, at least, is a medico-legal step, which it is all but absolutely impossible to take without assistance from the learned profession of medicine and surgery. This second step is the connecting of the material Corpus before us, with some personality, with some human identity known once to have lived and moved upon the earth. As I am narrowing my remarks now solely to the domain of criminal law, I will go further, and assert that here the physican is not only indispensable, but absolutely omnipotent. The whole possibility of a criminal trial here hangs upon his word alone. It is he alone who can tell us whether this body was deprived of its life by natural causes, by accident or suicide, or whether a homicide has been committed. If the one, there can be no trial, as there has been no crime. If the other, the law must begin its search for a culprit for an indictment, and proceed to construct the complex machinery of an arraignment.

This all-important medico-legal process of connecting a dead body or Corpus Delicti with a human being once known to have lived, with your permission I shall attempt to consider to-night, under the head of "PERSONAL IDENTITY," and under it make for convenience two sub-questions, namely:

1. How may a lifeless body and a living one be recognized as having been, at one time, the same? And

2. How large or how small a parcel of human remains can be so safely identified by medico-legal experts, in cases involving life and death, as to entitle them to be considered as constituting a Corpus Delicti?

Of course I do not expect to develop in this examination of cases anything more than one or two general rules. Each case must, of course depend upon its own circumstances. The body of A will be identified in one way, and that of B in another. But, if I can do no more, a digest of the cases might not prove without value for reference to members of this Society; and, upon grouping these cases together, it is

hard to conceive that some principle, in common to them all, should not appear.

At first this question of one's Personal Identity might seem to be the simplest that could possibly come before a court. But the fact is precisely the reverse. Even in life the question whether a living man, speaking and moving, capable of being watched and questioned, is one identity or another, has proved itself, over and over again, by far, instead, the most perplexing. Cases of mistaken Personal Identity have been all but innumerable, since the days of Antipholus of Syracuse, and his twin brother, Antipholus of Ephesus, and the two Dromios, their servants. "Cases of Resemblance," we remember, is the title of one chapter of Pliny's Natural History, wherein the author cites the instances of the great Pompey, of whom personally the plebeian Vibias was the double and counterpart; the Consuls Lentulus and Metellus; and the impostor Artemon, the double of Antiochus, King of Syria. And without referring to the very recent Tichbourne Trial, in which no less than eighty-five witnesses—under the most rigorous and vigorous cross-examination that possibly the world has ever seen—maintained positively that a certain Englishman was Sir Roger Charles Doughty Tichbourne, a Baronet, while a corresponding number were equally unshaken in their conviction that he was one Arthur Orton, a Wapping butcher, the books are full of puzzles of this nature.

Jack Cade, the pretended Mortimer; Lambert Simnel, the false Earl of Warwick; Perkin Warbeck, the sham Duke of York; the various personators of Don Sebastian, the lost King of Portugal; Jemeljân Pugatscheff, the sham Peter III.; Padre Ottoman, the supposed heir of the Sultan Ibrahim; Mohammed Bey, the Counterfeit Viscount de Cigala; the case, in 1748, of the false Prince of Modena; the monk Otrefief, claiming to be Prince Dimitri; Joseph, the pretended Count Solar; John, claiming to be Earl of Crawfurd; John, claiming to be Sir William Courtenay; James Annesley, calling himself Earl of Anglesea; Hans, claiming to be Earl of Huntingdon; Rebok, the counterfeit Voldemar,

Elector of Bradenburgh; Arnold Du Tilh (or Dutille), the pretended Martin Guerre, who successfully deceived the living wife so far as to live with her three years, surrounded by four sisters and two brothers-in-law, and beget two children, before his discovery, and whose case came before the Parliament of Toulouse in 1560, wherein forty witnesses on each side swore to his personality; Pierre Mege, the fictitious De Caille; Michael Feydy, the sham Claude de Verre; the claimants to the Banbury and Douglass Peerages; James Percy, calling himself Earl of Northumberland; Alexander Humphreys, the pretended Earl of Stirling; William George Howard, the false Earl of Wicklow; the numerous so-called heirs of the Stuarts; John Hatfield, claiming to be the Hon. Alexander Hope; Thomas Provis, calling himself Sir Richard Smythe; Lavinia Jannetta Horton Ryves, who is now, or was within a few months, living in England, calling herself Princess of Cumberland; Amelia Radcliffe, pretending to be countess of Derwentwater; in France, the child *Francis Noisen*, who not only was the exact counterpart of the child *Labrie*, but who had a scar on the right arm and a cicatrix on the inner side of the left knee, as had he (Beck. Med. Jurisprudence, i. 674; which reminds me that in Covington, Kentucky, a case is said to have occurred where two men met, each the double of the other in form, stature and feature, each having lost a right leg, amputated at the knee, and each being blind in the left eye, from accident;) Hervagault, Maturin Bruneau, Naundorff, Augustus Meves, and Hebert, (calling himself Richemont, Duke of Normandy,) who all claimed to be the lost Dauphin of France, as did, in our own country, the Rev. Eleazar Williams, the Apostle to the Indians, whose marvelous story, less than twenty years ago, made familiar in every circle the question, "Have we a Bourbon among us?" It is less than a year ago, I believe, that three men, Carr, Finnegan and Farley, after having served nearly two years in the State Prison at Trenton, were discharged as having been the doubles of three other men who once robbed a jewelry store in Newark, New Jersey, and for which burglary these three

had been convicted; recalling the exactly identical cases of the peasant *Baronet*, and of Frank Douglass. The latter, in England, many years ago, was committed for highway robbery on the positive oath of the parties he was supposed to have plundered, his personal resemblance to the real highwayman being so exact as to deceive everybody. Douglass, however, I believe, ultimately escaped conviction (Paris Med. Jurisprudence, i. 222: iii. 143); in which he was more fortunate than *Baronet* (born in France in 1717, see *Causes Celebres par Mejan*, tom. iv., p. 329), who was sentenced to the galleys and there kept many years, simply because he had the misfortune to exactly resemble somebody else. All these are proofs of the fallibility of human testimony in cases of Personal Identity; and if all these, in life, puzzled and perplexed the most conscientious investigators, what shall we say of the scrutiny whether a piece of bleeding or mortifying flesh, or a parcel of bones, is or is not a fragment of a missing human identity?

Now we are told by the books that recognition in the case of a dead body must be effected, first from the features; failing these—and they are often so bruised as to be unrecognizable, as in Colt's case, New York, 1842 (the New York Tombs, Sutton, N. Y., 1874, p. 64), when the murderer deliberately mutilated them to prevent identification, or in McCann's case (13 Sm. and Mar., 472), where the face had been exposed and eaten by swine—investigation is to proceed by reference to marks upon the body, to clothing, or to objects or things found near the remains; and, thirdly, when all these are wanting, by careful medical or anatomical examination of the remains themselves, whether bones or portions of flesh, to elicit facts as to the weight, age, sex, stature, and date of death of the deceased; upon which facts must then depend the whole case of the accused. Let the law do its best; it is here, in this third case, bound hand and foot. It cannot advance a step without medico-legal experience; without that it is powerless to do justice, and the faintest attempt is certain to do irreparable injustice instead.

Recognition by features, or by clothing or other objects,

can be made by any competent witness. It is very clear, however, that, failing recognizable features or material substances, the services of other than lay witnesses must be sought. But courts need not look for. Fortunately for the lawyer, at his hand, and within easy call, is a learned and honorable profession, older than his own, and a class of witnesses who, in every case of this character, have proved themselves competent and most conclusive.

It is of incalculable importance that the witness so introduced, at the inception of the inquiry, should be free, above all things, from suspicion. He is in a position where his lightest word may involve the liberty, and ultimately the life of a fellow being; and it is to the peculiar glory of the medical profession, that last of all does a physican allow any prejudice or suspicion or hasty suggestion of a crime to anticipate his scrutiny. The rule of Dr. Beck, that every possible circumstance which might have caused death is to be recollected before a case is referred to a criminal court by a physician, is one suggested rather than necessitated by the universal bearing of physicians in court.

The commission of a crime is an inference from a corpus delicti, and since the law never permits an inference from an inference, it is fortunate that a body of witnesses who, from education, habits and experience, are unlikely to take anything for granted, is so near at hand. Who is not familiar with hundreds of cases in which lives have been saved by the testimony of physicians, where a hasty word from one of them might have had just the opposite result? For myself, I can point to no more eminent proof of the fact, that physicians may be safely relied on to observe this rule of Dr. Beck, and will banish from their minds any thought of crime until it is forced there by overwhelming demonstrations, than the celebrated Wharton case so lately tried in Baltimore. The People proved a motive for a homicide and a purchasing of poison; they traced that poison to the very hands of the prisoner, and proved a corpus delicti in whose stomach the poison was found, and, moreover, a body to which in life the prisoner had been seen to administer matter which it re-

ceived voluntarily into its stomach; and yet, in the face of all this and much more, eminent physicians found that there was so strong a probability that the deceased had died of cerebro spinal meningitis, that the jury so unanimously found. Not alone in their art and practice may the profession of medicine claim to be the life-saving profession of the world!

It is the physician who, from the posture of a corpse, the position of a wound, the condition of a bruise, the color of the skin, or from a thousand other details which will more readily occur to a doctor than a lawyer, must indicate the whole course of a legal investigation, or stifle it at the start. the physician is not only an expert; he may be also a valuable detective. In the case of Beaugouin, who was murdered, cut in two and thrown into the Loire, less than a hundred years ago, the upper half of his body was discovered and interred, and upon being taken up fifteen days after and examined, the physician, De Ouvrad, asserted from his examination that the body had been hewn in two by a butcher. So the fact turned out to be, and the identical butcher who murdered the man was guilotined. But to the consideration of our headings:

And first, as to recognition, by features, of the Corpus Delicti.

All testimony as to personal identity, while it should undoubtedly be received, should be examined with the greatest care, and should not be allowed—if resting simply on a resemblance of features—to alone justify the verdict of the jury. This rule operates, says Dr. Wharton, not to exclude such testimony, but only to diminish its credibility. The doctor cites a case in Iowa, where a man had been murdered and the head severed from the body, and by a physician preserved in alcohol. Many witnesses were called to identify it. The prisoner proposed to prove, by two witnesses who were physicians and surgeons—and whose knowledge and attainments in their profession made them familiar with the natural changes through which a human body must necessarily pass after death—that, on account of such natural and

inevitable changes, it was not possible for any one to identify the head. The court properly refused to permit the evidence of the physicians to go to the jury. It would have been competent, it was declared, for the witnesses to have stated the nature and character of the changes in the human body produced by death within certain periods of time; to have explained to what extent these changes had operated upon the head of the deceased, and their usual and necessary effect, according to the laws of nature. The progress of decay, the distortion and discoloration of the features, and the consequent change or destruction of the peculiar expression of the countenance by which human faces are usually distinguished and identified, as shown by the head in person, would have been proper facts for the witnesses to have pointed out and explained to the jury. It would have been for the jury then, from this medico-legal evidence, to have judged of the value of the testimony as to the recognition.

Secondly, as to the recognition by clothes or articles found near the corpus delicti.

This is not always safe. Sometimes, indeed, a skeleton may be identified by marks, or objects found near it. In the case of Rex *vs.* Clewes, twenty-one years after the death of a certain person, his skeleton was allowed to be identified by his widow from a peculiarity about the mouth, and by a carpenter's rule and a pair of shoes found in the vicinity. But even in cases of the finding of an entire body a few hours after death this evidence is not safe. In 1868 the body of a man was found in the cupboard of a house in Hackney, England. One Dr. Elias, the Medical Superintendent of an adjoining hospital, recognized the body as that of a lunatic under his charge, named Heasman. He recognized the clothes, the name Heasman was written on the stockings worn by the deceased, and the brother of the deceased was also confident of the identity; and yet, almost immediately after, a stranger, totally unconnected with the hospital, identified the cadaver as a totally different person by means of a photograph; and a woman, Mrs. Mary Anne Banks,

positively swore that the body was that of her husband, one Ebenezer Charles Banks, a commercial traveler. She and her two sisters positively, upon oath in the Coroner's Court, so identified the body, and stated that a particular wound would be found upon the little finger; such wound was found, and this case, which produced much comment in America as well as England, went far to convincing the two professions of what will be the rule of courts in these cases to-day, and which we have just stated in the language of Dr. Wharton.

Thirdly: As to the proceeding by means of actual surgical and automatical examination. And in conjunction with an examination of this third rule, it is peculiarly necessary that we ask our second question, namely: Supposing that the corpus delicti consist not of entire human bodies or even skeletons, but of fragments and portions, may the professional examination still proceed? How much of a human body will be recognized as a body in law, as a corpus delicti at all? Is the fragment of a human trunk—a limb, a hand, a collection of bones, a quantity of viscera, a pile of ashes, or a drop of blood—such a corpus delicti as the law will consider sufficient evidence that a crime has been committed to justify it in searching for a corresponding criminal? I believe that an answer to this question can only be attempted by reference to the cases under this head, with which the books are loaded.

In the Uzzerdook case, very recently tried at Westchester, Pennsylvania, in 1873, the remnants of two human bodies were found in different places. One of these was claimed to be, by the defense, the body of a man named Goss, said to have been burned to death, while the other was finally *proved* to be the remains of this same man, who, instead of being burned to death, had been murdered by the prisoner. The case originated in a conspiracy against an insurance company. The trial was distinguished by the elaborte and costly circumstantiality which distinguishes all trials in which wealthy corporations are parties. Between these two corpori delicti—one found in the ruins of a burned building

in a populous city, and the other discovered putrefying in a desolate wood many miles away—a chain of evidence was found so continuous and convincing as to warrant the conviction, followed by the execution, of the prisoner Uzzerdook. The facts are as follows :

The man Goss, proved to have had a large insurance upon his life, disappeared from the city of Baltimore on the night of the 2d of February, 1872. Upon that very evening a frame shop, in which he was said to have been engaged in gilding picture frames and experimenting with a substitute for India rubber, was almost entirely consumed by fire. In its ruins near the chimney, in the centre of the building, charred and blackened human remains were discovered. Mrs. Goss claimed them to be the remains of her husband. From the body the hands and feet were off, the skin was burned crisp, and blackened. Identification by means of the features and expression was impossible. Mrs. Goss testified, however, that the corpse was brought home on the evening of the day following the fire, and that she identified it as that of her husband ; testifying, however, that she judged only by the size and shape of the head, the neck and the body. In a suit which she brought against the insurance companies for the sums insured on his life, her father and mother also were witnesses, both testifying that they observed the same resemblance to Goss in the neck, head and body. Another witness said, the body, when taken from the fire, resembled that of a female ; but a Dr. Howard, who swore to having made a careful examination of the body a year after the fire, testified that it was the body of a man of about five feet eight to ten inches in height, with full chest, and shoulders thrown back. This was on the 2d day of February, 1872. On the 9th day of July, 1873, a man named Hurfford happened to be passing what are known as Baer's Woods, near Westchester, Pennsylvania. He observed a crowd of buzzards and an offensive odor. This led to the discovery—at about sixty-five feet from the highway—of something mysteriously hidden by means of leaves and a thin covering of earth, with the felled limbs of trees piled above. Upon

the covering being removed, a shirt colored with blood and the mangled and putrefying remains of a human being were displayed. Upon being examined by surgeons, various marks and traces of violence were found, and the front teeth—four above and four below—were discovered to have been driven back into the mouth, two still adhering to the gums, and two lying loose upon the tongue. It is not within our province to follow the chain of testimony, the scrupulous and minute investigation by which these two bodies were connected, and by which one Uzzerdook, who had been a witness for Mrs. Goss in the actions against the insurance company, was proved, to the satisfaction of the jury, to have been the murderer, the remains of whose victim were found in the woods. But it is important to us to notice that the latter only of the two corpses was held to be such a corpus delicti as would justify the inference of a crime.

So far the principle would appear to be that only when marks of violence can be discovered by physical examination can we safely accept human remains as a corpus delicti. The burned body might have been burned by accident. The body found in the woods, mangled, hacked and hewn, wrapped in bloody garments, concealed by a heap of leaves and limbs of trees, could not have been deprived of life and so disposed, by accident. Had this second body, however, remained long enough without discovery, it is easy enough to imagine that the traces of crime might not have been readily apparent. In that case these would have been discoverable only by medico-legal scrutiny. But I incline to think, from the authorities, that some evidence must appear, from the body itself, of its having been deprived of life by the wilful act of another, before it can be considered a corpus delicti. Otherwise it is not a "substantial general fact of a crime having been committed" (to use the words of our definition). It is a "substantial general fact" of a death, indeed, but not of a death by crime. I am aware that Bentham—whose writings on Evidence were the New Testament and Gospel of that science—asked if a criminal, by causing a successful disappearance of his victim's body,

by means of its decomposition in lime or other chemical menstrua, or by submerging it in an unfathomable spot in the sea—the homicide being proved *aliunde*—could escape punishment? I apprehend that the answer must be—Possibly not. But the rule will be disturbed with great reluctance, and only in the strongest possible case, namely, where the killing is proved by eye-witnesses; or, if in the case we have been considering, a person were actually seen to enter a building, and all means of egress therefrom watched, and before that same person left the building a man should be seen to ignite it, and the building thereupon should burn down, and the charred body of the person who had been known to be within—or a charred body of a human being—be found in the ruins, such a proof *aliunde* of the substantial general fact of a homicide might dispense with the proof from the body itself. But we must, nevertheless, insist that the rule the law has laid down for us is the safest for the community at large. By its strict application a guilty man, indeed, may escape. Still, we must remember that the law was not written for the benefit of one man, but for all. Not to meet the individual case of the particular prisoner, (whom we may happen to know, is guilty;) but to meet the greatest possible number of cases, and, on the whole, to be on the safe side in dealing with that whole number. To say nothing of the mind of a Bentham, it would not be difficult for any ingenuity to conceive of a variety of cases wherein strict adherence to legal rules will work hardship. But still, for all their ingenuity, I respectfully submit, the law is the law, and, in its integrity, in the long run, is the safest for us all.

And to prove that it is safest, let us look at the instance, in 1758, afforded by the case of Eugene Aram, whose romantic history has been so often borrowed by fiction. Eugene Aram was arraigned in that year for the murder of one Daniel Clark, in 1745, thirteen years before. The principal evidence seems to have consisted of a quantity of bones found in St. Robert's Cave, near Knaresborough. In his magnificent defense—which, though pronounced by a layman

on trial for his life, and deprived of the privilege (as was the custom of those days) of counsel, has scarcely been surpassed by the most eminent of accused pleaders—Aram suggested that these might have been the bones of hermits or anchorites as naturally the bones of Daniel Clark, and referred to many instances of such discoveries, which would make the probability of there being such remains much stronger than the probability of a peaceable, well-reputed recluse and scholar like himself suddenly becoming a murderer; and dwelt upon the horror of the mistake of which the law would be guilty did it take a human life upon such variable evidence. As it happened, Aram's case finally turned upon the testimony of an accomplice, who became state's evidence, and this danger was not experienced nor alluded to by the court. But many years later, in the United States, the point raised by Aram was elaborated by so marvelous an instance, that I may be pardoned for recapitulating it here.

In 1812 their lived in Manchester, Vermont, a man named Barney Boorn, who had two sons, Stephen and Jesse, and a son-in-law named Russel Colvin, all living with him. Colvin was an eccentric man, supposed to be insane at times, and frequently absented himself for days without notice, and without giving any account of his adventures. At last he was missing so long that suspicions of foul play were aroused. Months and years passed, and yet there was no explanation of Colvin's absence. Some of the neighbors remembered that the Boorn brothers, very shortly after his disappearance, had declared that Colvin was dead, and that they had "put him where potatoes would not freeze." They had not been on good terms with him, and this added to the prejudice against them.

Singularly enough, other circumstances began to accumulate against the brothers. Some children found a dilapidated hat, which was recognized as the one Colvin wore at the time of his disappearance. Soon afterwards a dog uncovered some bones beneath an old stump, which at first were pronounced to be human bones, but subsequently were

found not to be. An uncle of the boys had a dream, in which Colvin came to his bedside and told him he had been murdered. A barn in the neighborhood was mysteriously burned, and it was at once conjectured that the murdered man had been buried under it, and the fire intended to destroy all traces of the crime. All these circumstances added to the excitement against the Boorns. Stephen was then out of the State, but Jesse was arrested. He confessed that his brother Stephen had told him, a short while previously, that he and Colvin had quarreled, and that he had killed Colvin by a blow on the head. The people of the neighborhood, and for miles around, spent the next few days in another search for Colvin's bones, but none were found.

Stephen Boorn was brought home. He denied the statement of Jesse and asserted his innocence. The brothers were imprisoned to await the meeting of the Grand Jury. The principal witness before that body was a forger who had been confined in jail with the Boorns. He reported in detail a confession of the murder by Jesse Boorn, and both the boys were indicted. This was in September, 1819, more than seven years after the disappearance of Colvin. In November the trial took place. Meanwhile, Stephen was induced by the remarks upon the hopelessness of their case to confess the crime, in the expectation of mercy from the court. This confession was the chief evidence against them. Notwithstanding that it was drawn out by a hope of obtaining a more favorable verdict, and that no body had been found, as proof of the murder, or even that Colvin was dead, the brothers were convicted and sentenced to be hanged on the 28th of January, 1820. So decisive did the testimony against them appear to be, that the mother of the convicts was expelled from the Baptist Church, and the father held a prisoner for a time, upon the suspicion that they must have been accessory to the murder.

A few of the citizens who were disposed to be merciful signed a petition for the commutation of the sentence against the Boorns. The Legislature voted to change the sentence of Jesse to imprisonment for life, but refused to

interfere with that of Stephen. Meanwhile it occurred to Stephen, in an interview with his counsel, to advertise for Colvin in the newspapers. Up to that point his counsel had believed him guilty, but he assured them that his confession was untrue and that he was innocent. The following notice was therefore printed in the *Rutland Herald:*

"MURDER.—Printers of newspapers throughout the United States are desired to publish that Stephen Boorn, of Manchester, in Vermont, is sentenced to be executed for the murder of Russel Colvin, who has been absent about seven years. Any person who can give information of said Colvin may save the life of the innocent by making immediate communication. Colvin is about five feet five inches high, light complexion, light colored hair, blue eyes, about forty years of age.

"*Manchester, Vt., Nov. 26th,* 1819."

Newspapers traveled slowly then, and Stephen's friends had but little hope that this would save him, even if his story was true. Three days afterwards, (says the pamphlet of Mr. Sargeant, one of the counsel in the case,) the New York *Evening Post* copied it, and "the next day it happened that the notice was read aloud in one of the hotels of New York. Another man standing near, named Whelpley, said he had formerly lived in Manchester and was well acquainted with Colvin, and related many anecdotes and peculiarities concerning him. Mr. Tabor Chadwick, of Shrewsbury, N. J., was also standing near, and listened to the conversation, which made a deep impression upon his mind On thinking the matter over after his return home, it occurred to him that a man then living with his brother-in-law, Mr. William Polhemus, of Dover, New Jersey, answered exactly the description of Colvin as given by Whelpley." Finally he wrote a letter to the *Evening Post*, giving his conclusions. Whelpley saw it, went to Dover, identified Colvin, and, after great effort, induced him to visit Manchester. There was great rejoicing in the town, and Stephen Boorn was brought from prison to fire the cannon that celebrated his deliverance."

So much for a criminal trial in which medico-legal evidence took no part.

We come next in the order of our inquiry to a trial, fresh in the minds of many present, wherein, in spite of the delicate and dangerous nature of the research, a man was hung upon evidence depending entirely upon the recognition of a very few human bones by surgeons. I allude to the famous case of Dr. Webster, executed in Boston, August 30th, 1850, for the murder of Dr. Parkman, in that city, on the 24th of November, 1849. A careful reading of the evidence in that case, I think, will lead to the conviction that the mere fact of portions of a human body being found in a medical college, even in so unusual a place as a vault connecting with a professor's apartments, hardly raised a presumption against the prisoner. It was the finding, in a laboratory furnace, of a number of small bones from a human skull, fused with slag and cinders, by examination of which acute experts discovered appearances indicating that the skull had been fractured before being subjected to the action of the fire; besides the identification by a dentist of certain teeth which he had filled with gold, as Dr. Parkman's, which really induced the conviction. I cannot refrain here from remarking, however, that it might not be well to place too much reliance on the Webster case to-day. Had Dr. Webster been tried in 1876 instead of 1850, upon the same evidence, it is very probable that he would have been acquitted. For if the last twenty-five years had been fruitful in anything, they have been fruitful in proofs of the uncertain and unsafe nature of circumstancial evidence, and of the reluctance with which juries will convict in capital cases upon its strength alone; to say nothing of the advanced discoveries in the region of what I may call the probabilities of science, or of the daily increasing industry of counsel. But the case of Dr. Webster at least shows in strong contrast to the Boorn case, and no two could better illustrate our point. In the Boorn case a man was convicted—*without* medico-legal evidence, (as subsequent facts proved) wrongfully; while in the Webster case the man was convicted almost solely *upon* medico-

legal evidence—(as subsequent facts proved)—rightfully; and this, although in the one case the non-professional evidence in quality and quantity was overwhelming, while in the other the professional evidence almost stood alone.

The Webster case had its seeming prototype and parallel in one mentioned in the London *Medical Journal*, vols. v., 411, and xv., 518, where a corpse was disinterred at Lyons, in France, seven years after burial, and identified by the hair and teeth. (*Annual Register* for 1829, page 189.) In that case M. Orfila was asked if a body removed from the grave after such a lapse of time could possibly afford proofs of poison, and if so, in what manner such an examination was to be conducted. To which he replied that it was very probable the body was already reduced to ashes, but that, nevertheless, if a sort of blackish coom was found at the sides of the spinal column, chiefly in the lumbar and dorsal regions, that mass might be analyzed in the manner pointed out in his work on Toxicology. And, again, in the trial of Cook, at Leicester, in 1834, a parallel is furnished. In that case, Cook, after burning the body of the victim, was convicted by means of a portion of the flesh of the murdered man being found, sufficiently large to be identified as belonging to the body of a male adult. (*Annual Register* for 1632, page 271.)

But the very prototype and pattern of the Webster case was the case of Theodore Gardelle, tried for the murder of his mistress, at the old Bailey, in 1761, which, as proving at least that there is nothing new under the sun, we will briefly recapitulute from the account given in Vol. II., Newgate Calendar, page 295. Gardelle was a foreigner, a native of Geneva, who lodged at the house of a Mrs. King in Lincoln's Inn Fields; this Mrs. King subsequently becoming his mistress during his residence there. Gardelle one day being something of an artist, painted her picture, and did not make it handsome enough to suit her. Upon this trivial pretext, at one time when they were alone in the house they quarreled, and the quarrel growing to blows, Gardelle finally stabbed the woman with a sharp ivory-pointed comb in the

throat until she died. He then put the body into her own bed, and covered it with the bed clothes, after which, according to his own story, he fainted away at the thought of what he had done. The murdered woman's maid entered the room, however, he came to himself, and sent the maid off upon some pretext of an errand. He seems thereafter to have proceeded, with the utmost coolness, to discharge the maid, to strip the body, to carry it into the garret, and there at his leisure to hew it to pieces, and to dispose of it in parts. The entrails he emptied into the necessary, and the bones and solid parts he burned deliberately in the garret. At the end of a week, suspicion having been aroused, small fragments of half-burned bones were found in a fire place in the garret, and in the cock-loft they found the private parts, one of the breasts, and other portions of a female body. Gardelle was convicted, and hung in chains on Hounslow Heath, in the year we have mentioned.

We seem to have come, therefore, to the fact that very small portions of a human body may constitute, under certain circumstances, a corpus delicti. I am not aware that a conviction has ever been obtained upon more minute particles or traces than those found in the Webster and Gardelle cases. In 1868 a case *did* come before a court wherein the only corpus delicti alleged, consisted in a pool of blood mixed with vicera, supposed to have been portions of a human brain.

The circumstances were something as follows: A vessel on the high seas numbered among its crew two men, named Parker and Lambert, respectively. An animosity was known to have existed between them. One evening when Lambert was at the helm, the captain or some one in authority on deck, ordered Parker forward to look for land. He went, and this was the last ever seed of him, alive or dead. A large pool of blood, mingled with a whitish brown substance, which those finding it—albeit they were sailors and not surgeons—supposed to be human brains, was found upon the forecastle deck. This spot probably was cleaned away very shortly after, but sufficient evidence of there having

been such a spot seems to have been admitted. The captain and crew seemed to have concluded from their own observations that the man Lambert had called somebody to relieve him at the wheel, had followed Parker forward, brained him with an axe from behind, and pitched the body overboard. At any rate, he was put in irons and brought into this port, where he was tried in the United States Court, before Judge Benedict, for murder on the high seas. But the Court or at least the Jury failed to find that the pool of "blood and brains" was such a corpus delicti as would justify them in convicting anybody.

It will be seen that this case differs from certain other cases of alleged murder on the high seas, in that, if murdered, traces of the body, or at least of the matter once entering into the composition of a human body, were found on the deck. In Hindmarsh's case (2 Leach Crown Law, 569), the accused was actually seen to throw the body of the missing man overboard, but his counsel contended that, as it was possible, however improbable, that another ship could have rescued the man, no conviction could be had for his murder as long as there were a possibility of his being alive; which (although the prisoner in that case was executed upon conviction upon other grounds) seems to be good law. And so in cases of infanticide. Courts hold very strictly that the corpus delicti must be shown beyond any reasonable doubt.

But we need not multiply instances. A sufficiency of cases, I think, have been referred to, to justify us in apprehending that the difficulty of separating the testimony as to the corpus delicti from other evidence will prevent our laying down precise rules. We have seen, on the one hand, in the Uzzerdook case, that the personal identity of at least one of the remains was arrived at by evidence as to the movements, the actions, and the spoken and written words of living persons, and the circumstances under which they were done and said. We have seen, on the other, in the Lambert case, that the jury positively declined to find, in a pool of blood and animal matter, any corpus delicti at

all, even when circumstances, and acts, and words strongly suggested that the blood and the animal matter was portion of a human being. Even when the matter was found on the forecastle deck of a ship at sea, out of sight of land or other vessel, and when a human being, one of the crew, was missing, who had a moment before stood upon that forecastle deck, and this, besides, even when, (as it actually appeared in this trial), Lambert, in a state of intense excitement, had followed him forward, and returned alone with a hatchet in his hand. In the one case the corpus delicti without the evidence would not have satisfied the jury, and in the other the evidence without the corpus delicti *did* not.

Even in the Webster case—which, with the single exception of the Gardelle case, must so far stand unparalleled as the only case where fragments of a human body, unrecognizable by ordinary investigators, were actually identified after passing through an intense chemical heat, intended to utterly destroy them—all recognition would probably have failed had it not been for certain artificial matter, namely, the gold introduced into the murdered man's teeth by a dental surgeon. But, as we have said, had Dr. Webster been tried in 1876 instead of 1850, he would, doubtless, have gone back into the sunlight a free man. And his acquittal would only, indeed, have been another instance of that benign charity of the law, which would rather let ten guilty men slip through her fist than see an innocent man suffer, and which mercy to the individual is, after all, nothing more or less than unrelenting justice to the State.

The case of Eugene Aram did not develop the danger of this sort of corpus delicti evidence. But the romantic and miraculous Boorn case, which we have cited full, forty-four years later, did demonstrate how unjust it might be to hang a man on the strength of finding certain bones, even when all the circumstances seemed to identify them, and even when the prisoner himself confessed to have murdered the very man to whom society had assigned the bones discovered!

Verily, in our rules of Law lies our only safety. We may carp at them when we see a guilty man escape the gallows he has earned. But, supposing you or I were unjusly accused? We would be very thankful for those same rules of law, then!

But in all these cases the reliance of the law upon the medical profession is most manifest; and guided by the facts and experiences of each individual case, the two rules we have so far eliminated will seem to be the rules for the guidance of the physician when called upon for his opinion in cases of personal identity, namely,

First, That he shall be the first to *suspect a* CRIME; and

Secondly, That his opinion must be grounded on his physical knowledge of the matter examined, and not on the facts of the case, which are for the jury alone; that is to say, his examination must be purely anatomical and material. It is for the jury, and not for him, to SUSPECT, and to say whether, from his testimony, united with the other evidence as to the *res gestæ* in the case, it is likely that a crime has been committed.

I have before remarked that the law will not permit *an inference from an inference*, but, if at all, will draw the inference itself from a state of facts sufficiently proved; and in drawing this inference the court does nothing more than apply, under rule and sanction of law, a process of reasoning such as would occur, under the circumstances, to the mind of any intelligent or reasonable person—the force of which reasoning rests altogether on experience and observation, the course of nature, the constitution of the human mind, the motives of ordinary human action, the habits of society, the usages of men in neighborhoods and the like. Although, therefore, the physician's testimony is absolutely the indispensable guide of the court, it is, nevertheless, only the guide of the court's *inference*, and therefore must not, itself, be an inference. The evidence of the physician must therefore consist, first, OF THE FACTS THEMSELVES; and second—not of his inference from the facts—but OF HIS PROFESSIONAL AND SKILLED AND EXPERIENCED KNOWLEDGE OF THE CAUSE OF THOSE FACTS. And in forming his opinion, it is for

the physician to remember that his is the one great exception to the rule which rigidly excludes opinions, an exception founded on the maxim of Littleton, "cuilibet in sua arta perito est credendum." Every man is considered skillful in his own profession. The opinion of witnesses possessing peculiar skill is admissible whenever the subject matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment—whenever a knowledge of the subject matter involves more or less knowledge of any science attainable by course of study, preparation or experience.

Ordinarily this rule as to opinion evidence is qualified by another rule, namely, that scientific men called as witnesses may not give their opinions as to the general merits of the case, but only as to the facts already proved. In cases of Personal Identity it is easy to see that, at a proper stage of examination, this qualifying rule is altogether removed, and the physician's opinion as to the identity is indispensable. Upon it may hang the life of an innocent man, and we have seen that he may place his life with confidence in the hands of the physician. "It would not be easy," says the Mr. Best before quoted, after a long examination of this class of evidence, "to overrate the value of the evidence, in difficult and delicate cases, given by medical men and physiologists, as witnesses in courts of justice."

THE PLEA OF INSANITY.

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It is not the purpose of this paper to attempt a definition of insanity in the abstract. Jurisconsuls and physicians alike have ever failed, and ever will fail, to establish an unvarying "norm" of mental function which shall be applicable to all cases; and this for the reason that each individual problem involves the consideration of such shifting factors as congenital temperament, training, habit and other personal circumstances; John Doe's insanity consisting in his departure from the mental state which is natural to himself, not in his difference from the mental state which is natural to Richard Roe. When the boisterous hoosier vents his untutored animal spirits in vociferous tune and saltatory "break-downs" in public places, we do not doubt his sanity, for, as he himself would say, "It's the nature o' the beast;" but if an unusually grave professor of philosophy were to indulge in similar outbursts, we should more than suspect him to be mad. An eminent British alienist recounts an instance in which the wearing of a white hat was the first marked indication of lunacy; not that a white hat in itself shows weakness in the head it covers, but that the wearer in question was a clergyman who had theretofore always been a great stickler in the details of his clerical costume. In brief, the nearest approach to a verbal description of insanity is to call it *a departure from the individual's natural mode of thought and action, arising from the subjective change—i. e, not to be accounted for by changed external conditions;* or to put it in

* Read February 7, 1877.

the form of the algebraic formula on which the modern scientific method insists, if we represent a man's original character by *a*, his training and habit by *b*, and his present peculiarities of conduct by *c*, then, in any given case, *insanity*=*a b* plus or minus *c*.

Of course this equation does not technically exclude transient disturbances, like the delirium of fever, etc., nor will it meet all the quibbles of cross-examination; but it will suffice for the comprehension of the general reader, and is, moreover, efficient for practical working, in the vast majority of instances. So significant is the incongruity of present and past demeanor, that a recent writer on the subject even affirms that if an habitually eccentric person were all at once to become like his more sober-minded neighbors, the alteration should be regarded as portentous of impending lunacy; which seems very much like saying that if a delicate person were to cease coughing and begin to gain flesh and strength, we should suspect that consumption was about to declare itself.

The aspect of insanity most interesting to the public is that which relates to criminal actions, especially to homicide, since it has latterly become the fashion with counsel for the defense to impress upon the juryman of the period that killing is *prima facie* evidence of mental unsoundness, and to retain medical experts as special pleaders—not to give an impartial scientific opinion, but to concoct the most ingenious case for the defendant, until many people are inclined to think that the professed "mad-doctor" looks on every one except himself as insane.

It is beyond question, however, that there are numerous phases of insanity clearly distinguishable by a professional observer, but not easily to be perceived by an unpracticed eye; and the dispute between law and medicine over these obscurer forms of mental disease arises from the fact that the legal notion of insanity remains unaltered from a past age, when nothing short of total dethronement of reason was recognized as lunacy, whilst modern medicine has learned to detect earlier stages and less-marked varieties of affections of the brain as well as of the other organs. Even in

the most advanced legal opinions, two characteristics insisted on as essential to insanity are, inability to distinguish right from wrong, and the existence of delusion; notwithstanding that almost every asylum affords abundant examples of lunacy—and dangerous lunacy—without delusion, and that every attendant on the insane can testify to the knowledge of right and wrong manifested by many of his most mischievous wards. The very furtiveness which marks the misdeeds of numerous persons who are indisputably mad, is in itself indicative of their consciousness of wrongdoing; the kleptomaniac, for example, does his insensate purloining with as stealthy care to avoid detection as the professional thief; he is fully aware of the distinction between *meum* and *tuum*, but his will is not strong enough to deter him from a larceny which he would be ready to reprehend if committed by another.

But even supposing that forensic doubts of diagnosis were set at rest, the question would remain, whether all these less-defined cases of lunacy ought to be excluded from the operation of criminal law; and this question would be unhesitatingly answered in the negative by a few, at all events, of the ablest alienists, who, when they certify to a patient's insanity, do not necessarily mean to imply that he is unaccountable for any and all of his actions. In other words, there is a distinction to be drawn between insane criminals and criminal lunatics; and it is quite possible that a person whose insanity would absolve him from responsibility in one direction may commit crime from a sanely criminal motive—if such a paradoxical expression be permissible. In any given case, the first question to be considered is, whether the criminal act was the direct outcome of the actor's insanity; the second, whether, if so, the person was incapable of resisting the insane prompting. The propositions thus suggested, which have been affirmed by British jurists, are resolutely opposed by Maudsley* and his followers, who, forgetting that the penal code regards not the moral sinfulness of an offense, but its injuriousness to society—punishing larceny more severely than the morally worse breach of

* "Responsibility in Mental Disease."

trust—are inclined, if not to look on crime as in all instances "the fruit of madness," and the necessary result of individual organization from the tyranny of which no one can escape, to insist, at least, that he who is in any respect of unsound mind, should be in all other respects exempt from legal accountability, on the ground that even in monomania "the rest of the mind is in a more or less marked state of moral or effective alienation;" that a person does not, when he becomes insane, take leave of his human passions nor cease to be affected by ordinary motives, and when he acts from one of these motives he does not, by doing so, take leave of his insanity." But Maudsley himself is forced to admit "some measure of responsibility in some cases." In speaking of the subjects of moral insanity, he says: "All the responsibility which they are capable of feeling is that which springs from a fear of punishment. But experience shows that this apprehension does influence some of them beneficially, and that the actual infliction of punishment may do them good; that in some few instances, at any rate, it is the best treatment which can be used;" and he virtually avows the sentimental nature of his argument in saying: "Abolish capital punishment, and the dispute between lawyers and doctors ceases to be of practical importance. There can be no doubt that the insane inmates of asylums are to some extent deterred from doing wrong and stimulated to exercise self-control by the fear of what they may suffer in the way of loss of indulgence or of the infliction of a closer restraint if they yield to their violent propensities;" although, even where he imputes responsibility to a criminal, instead of sentencing him in anger to a prison, he would consign him more in sorrow than in anger to the seclusion of an asylum.

Granting that an essential condition of insanity is the predominance of certain ideational or emotional states over volitional control, it does not follow that these states influence the whole range of conduct of the individual. It is a matter of common observation that a person whose reason is inoperative in some respects, may exercise perfect will-power over his thoughts and actions in others; intellectual

labor involving the closest concentration of the faculties has been done by patients incapable of resisting the most preposterous and groundless delusions; a large part of Conte's wonderful work was done while he was an incurable inmate of a *maison de santé;* nay, Maudsley goes so far as to affirm that the power of stepping out of the beaten track of thought and originating a new line of reflection is a common indication of the "insane neurosis." The self-control of lunatics may be carried still farther: "Nothing is more certain than that a monomaniac will sometimes conceal or deny his delusions, dissemble his feelings, and regulate his conduct accordingly; when he has a strong motive to do so—whether this be a lively fear of suffering or a strong hope of gain;"* and many instances are recorded in which such self-restraint has been maintained persistently for long periods of time, insane persons having successfully simulated sanity to obtain release from an asylum or to avoid being sent thither.

With the understanding that insanity, like "heart disease" or "liver disease," is a genetic term, including various forms of brain disorder, let us glance at the different conditions of which homicide may be the outcome, and see what application of the foregoing remarks can be made to them.

Little consideration need be given to the acts done by idiots or demented persons out of unreasoning mischief or mere imitation. If the imbecility be evident—and in such cases there can be no doubtful diagnosis—of course legal responsibility cannot exist. But it would be well for jurymen to bear in mind that actual imbecility is meant, involving ignorance of consequences, and shown in the whole range of the individual's conduct and past history; not the mere circumstance that he is somewhat below the average in intelligence. There may be instances in which stupidity might be regarded as modifying responsibility, perhaps, but these belong rather to ethics than to medicine.

Neither can their be any question of the irresponsibility of persons who commit violence under the influence of general mania, in which all the faculties are so manifestly de-

* Maudsley, *op. citat.*

ranged that the least practiced observer can readily detect the craziness. Although many chronic maniacs undoubtedly "know as well as any one that what they do is wrong, and they delight in doing it because it is wrong,"* no one who has ever seen such cases would on this account subject them to legal penalties. The only difficulty likely to arise under this head is where homicide has been committed in an attack of acute mania of brief duration, from which the patient has quite recovered. Here it may not be easy to obtain an accurate account of all his symptoms at the time of the outbreak; but something more than an outburst of temper should be proven. In such cases (we are not now speaking of impulsive insanity) the maniacal state is shown by the sufferer's entire conduct, not by the isolated act of violence. Moreover, although the access of acute mania may be more sudden than that of any other form of lunacy, its approach is, in the vast majority of instances, heralded by premonitory indications of marked significance, and we shall usually hear, besides, of a "neurotic" temperament; for, though a healthy brain may be gradually deranged by prolonged and unceasing worry, a sound mind is not quickly unbalanced by present events.

But, aside from cases of acute or chronic general mania, in which incoherence of thought and perversion of reason proclaim the disease unmistakably, we may have to deal with partial mania, wherein the mind is clear in most of its operations, aberrant in but a few directions; and this it is which oftenest furnishes food for medico-legal discussions. It is beyond dispute that such a condition exists; in Maudsley's own words, "A man may be insane upon one point and sane in all other respects;" the controversy is solely whether one so partialiy deranged should be exempt from accountability for crime committed on the sane side of his character; and with curious logic, immediately after the statement above quoted, Maudsley maintains the doctrine of irresponsibility. The same inconsistent theory is upheld by our laws, which, whilst admitting the civil competency of a partially insane person under certain circumstances to enter into contracts

* Blandford. "Insanity and its Treatment."

or to make a will, nevertheless declare that no act done "in a state of insanity" is punishable as an offense—a declaration which is always interpreted as covering crimes having no possible relation to the criminal's partial insanity. Among the medical men who advocate this extremely lenient construction of the criminal code, the arguments advanced rest upon the very great difficulty sometimes experienced in tracing a connection which really does exist in the lunatic's mind between his delusion and his apparently inconsequent act. Much stress is laid upon the exceptions to Locke's rule, that madmen reason correctly from false premises, and examples are adduced to show that the reasoning may be as insane as the premise: as, where a monomaniac, believing himself to be Christ, did unchristian violence to attract public attention to his fancied mission. Hence it is urged that, "The right problem for a court of justice to place before a scientific witness is to trace a connection, not between the delusion and the act, which may be undetectable—or, if detectable, such as would not excuse the act if the delusion were true—but between the disease and the act."* Whilst acknowledging the general fairness of this proposition, certain particular qualifications are required to render it satisfactory. We may admit that occasionally in cases of partial mania, even where the patient seems rational on most subjects, paroxysms of uncontrollable violence may occur, during which his actions are scarcely more than automatic, and he is as irresponsible as the sufferer from delirium. In a much larger class of cases of monomania the emotions and passions are exalted and easily excited; but in these the question will arise whether the patient is legally distinguishable from a quick-tempered person, whose impulses are virtually uncontrollable in his anger, but who is nevertheless punished for yielding to them; the point at issue is practically if "heat of passion" be a valid plea for a partially insane client and invalid for a nominally sane one.

Cases wherein homicidal acts unmistakably spring from delusion are also divisible into two categories, as to whether

* Maudsley, *op. citat.*

the delusion, if true, would or would not justfy the deed. If a loving parent kill his child in obedience to an imagined divine command, we cannot impute criminality to him more than to the patriarch Abraham; if a man be insanely convinced that the person whom he attacks in supposed self-defense was about to take his life, we must judge him as we would a person of sound mind under actual similar circumstances. There are, however, on the other hand, instances where hatred, revenge and other vicious motives are gratified on provocation which would be trivial, even if it were real. A monomaniac whose insanity is so partial as not to incapacitate him for ordinary business or social intercourse is possessed by the delusion that some casual acquaintance has blackened his character or supplanted him in his mistress' affections, and thereupon maliciously murders his fancied traducer or rival, or he broods over and executes mortal vengeance for a still less grievous imaginary affront, showing that he is wicked as well as insane. Whether here the insanity should cover the wickedness, is a query which medical experts show a growing inclination to answer in the negative Hammond* says: "If I entertain the delusion that a certain person has injured me, I may be insane; but, even if I am, I ought to be punished if I kill the individual who I imagine has done me a wrong," and he draws a broad distinction between persons who are "at the same time insane and responsible for an infraction of the law" and those "whose intellectual faculties are so perverted or destroyed as to render them absolutely unaccountable for their actions," advocating the infliction of the extreme legal penalty upon the insane person whose delusions are not such as would, if true, justify a homicide." Harsh as this view may seem at a first glance, it becomes scarcely more than equitable when we consider how often homicides of such sort are perpetrated after evident premeditation, and followed by carefully-devised measures to avoid detection.

Outside of these categories we come to cases in which—conceding all that can be claimed as to the difficulty of following up the sequence of an insane person's ideas—the

* "Insanity in its Relations to Crime."

criminal act is manifestly disconnected from any delusion, and prompted by a deliberately criminal intent. Just as the "delusion of persecution" could not excuse a man for committing a forgery with willful purpose to defraud, so neither it, nor, *a fortiori*, any less combative delusion, should excuse the commission of murder out of sheer vengeance or for the sake of robbery; and yet, every year, under the absurd phrasing of our statutes, this excuse is accepted in our courts, bringing scandal upon both law and medicine, until a diagnosis of partial insanity is sought as a kind of letter of marque to permit unlimited ruffianism. As a recent writer* says: "It is well known that some lunatics are vicious as well as mad, and that these sometimes basely take advantage of their situation and exhibit cool and calculating villainy." Even among recognized lunatics in asylums, we are told "that there are many of them who, although of unsound mind, are yet regulated by rational motives, and are as capable as sane men of appreciating the nature of an illegal act, of foreseeing its consequences, and of exercising self-control. We are told that insanity may be partial, and may be confined to certain regions of the mind, leaving those who suffer from it free from durance, and of vigorous will in all the ordinary relations of life. We are told that the insane may be deterred from crime by the dread of punishment, and that they are now presuming upon the immunity from punishment which they have hitherto enjoyed, and are giving license to their evil passions—to jealousy, rage and revenge—safe in the knowledge that they are insane;" and of such it is added: "If it can be shown conclusively that a lunatic confined in an asylum, who is in possession of adequate powers of self-control, has committed a premeditated murder, instigated by some rational motive altogether independent of his particular mental aberration, there can be no good reason why that lunatic should not be treated like any ordinary criminal." This common-sense view may, of course, be met by the theoretical objection that no insane person possesses "adequate" self-command; but we find Maudsley himself admitting that

* *British Medical Journal*, No. 766.

"a practical experience of the insane teaches us what a power of self-control even they sometimes evince when they have a sufficient motive to exert it. The fear of suffering by yielding to their insane propensities suffices, in many instances, to hold them in check; the occasional concealment of actual denial of their delusions, if they have something to fear from the discovery of them or something to gain by the concealment of them, testifies to a power over themselves which sane persons might sometimes envy."

Thus far we have been concerned with cases of what is called "intellectual insanity," wherein, by supposition, no doubt exists as to the diagnosis of the disease; for although there may be some instances in which the symptoms are too obscure to be discovered in a single interview, sufficient care and time will, as a rule, enable an expert physician to detect the malady with certainty. At all events, such forms of lunacy are never to be inferred merely from the commission of a criminal act.

But, passing from these, we reach a far more puzzling series of sudden outbursts, grouped under the heads of "affective," "emotional," "volitional" or "impulsive" insanity, characterized not by delusions or other marked disturbance of intellect, but by the predominance of instinctive impulse over volitional control. As regards these, a broad distinction, from the juryman's point of view, may be made between acts of purposeless violence, done in a state of actual unconsciousness analogous to acute mania, and those done with purposive vindictiveness. Thus an epileptic patient may have after a fit—or in place of a muscular fit—a paroxysm of furious mania, during which he will commit purely automatic violence; or he may be conscious of the approach of the "masked epilepsy," and warn those about him of the impending danger; and it must be admitted that in certain rare instances epilepsy may manifest itself solely by such uncontrollable mental convulsions, in a person who has never shown bodily indications of the malady. There are, however, other epileptics whom it is sought to excuse for intentional assaults on the ground that they are morbidly irritable and prone to commit violence on

the slightest provocation ; that, in brief, "all their passions acquire extreme energy." How much weight this argument ought to have, must be determined on the individual merits of each given case ; as a general proposition, it is no more valid than would be the allegation that an irritable and violent temper should absolve a non-epileptic criminal from penalty. A rule with very few exceptions is that the deeds for which epileptic insanity may be accepted as an exculpation are done very violently, without motive, premeditation or secrecy, and are followed by neither remorse nor even remembrance. The chief characteristic of epilepsy, whether in its mental or in its physical phase, is unconscious automatism ; and in opposition to the forensic quibbling of the day may be cited Maudsley's avowal, "that an epileptic person may be quite as sane as one who is not so afflicted, and, in the event of his doing murder, quite as responsible."

Of the condition known as "transitory mania" little need be said, save that most examples of it probably belong to epilepsy, and that in the few which remain there are usually antecedent and present indications of mental disease or of very manifest tendency thereto. "Possibly there may have been a sudden outbreak of insanity which ceased as suddenly as it came on ; but, unless there was strong evidence of it other than the crime, it would be proper to refuse to admit it."*

Somewhat analogous is the state of mind—or, rather, absence of mind—which has passed into a by-word under the name of "morbid impulse," where a person, acting "without passion, without delusion, without motive," is irresistibly impelled by an instinct "like the craving thirst for drink" to commit murder or other criminal deed which "his reason disapproves and his moral nature abhors, aghast at himself the while." The essential feature of this alleged form of disease is that, without apparent derangement of reason or loss of consciousness, the patient is possessed by "a violent impulse, which, swallowing up reflection and will, irresistibly utters itself in convulsive action."† But when we come

* Maudsley, *op. citat.*
† Maudsley, *op. citat.*

to look at the matter more closely, we find that even the strongest advocates of the doctrine of irresponsibility entertain doubts as to the existence of such an uncomplicated, single-symptomed malady. Maudsley acknowledges that "in most of the genuine cases, symptoms of derangement in addition to the morbid impulse, either antecedent to or concomitant with it will be discovered, if a careful enough examination be made," and, following Bucknill, ascribes many examples of paroxysmal violence to the earlier stages of recognized varieties of insanity, or to the epileptic category. Blandford, showing that "all insanity is impulsive, all insane patients are liable to commit such acts," affirms that "the act which is supposed to be committed under the influence of insane impulse is rarely, if ever, the first symptom of insanity or brain affection shown by the alleged lunatic," and teaches that "if we could sufficiently examine all the cases of so-called 'impulsive insanity,' and really ascertain the entire history and phenomena previous and subsequent to the commission of the act, we should find many other signs and symptoms of insanity, and should be able to assign to the majority of the patients places in the ranks of the ordinary varieties and classes of the insane." Farther on, still speaking of the same subject, he says: "The scandal which has come upon evidence given in doubtful cases of insanity has arisen from medical men giving their opinion after an amount of knowledge and examination of the patient which in no degree warranted any opinion at all. Half an hour's conversation with a patient may tell us very little about him; it may be necessary to see him again and again; to see a woman at various periods of the month; above all, to observe a patient without his knowledge—in the night, at meals, in various occupations, and to see what he writes, if he can be got to write. We shall have to consider his motive for the crime—if it be a crime—the method of its performance, and the preparations for it, and his present feelings with regard to it, etc." A fair general statement of the phenomena of this particular phase of lunacy is that acts of violence may be done with *intention*, but without rational *motive*. The affected person has an intense inclination to

kill some one, he does not care whom; his victim may be his dearest friend or an entire stranger; but when his impulse vents itself by selection upon an enemy in revenge of an old-standing grudge, the coincidence should rouse strong suspicion of the genuineness of his disease. Even where such vengeful memory is not shown, Hammond* places irresistible impulse and emotional insanity on a par with "heat of passion," depriving them of all palliative force when accompanied by "a deliberate purpose to commit murder or other crime;" and in his latest work† insists that if a person feeling a growing impulse to commit crime do not immediately place himself under restraint, "he is morally and legally in no better position than a ruffian who feels an impulse to acquire other people's property, and accordingly murders the man most convenient for the purpose." In most instances the gradual development of such morbid longings, from their repressible onset to the point where reason yields to them, gives ample time to follow this advice; but recorded observations force us to recognize the exceptional occurrence of attacks in which the domination is sudden; and here the discrimination is a nice one. Most of us who call ourselves sane have occasional morbid impulses—not, perhaps, homicidal in extent, but prompting us to do foolish, if not criminal things; madness consists not in the origination of these, but in the inability to master them by will. Among sane people, too, individual temperaments differ so that an excitable person is led away by feelings which cannot move the phlegmatic soul. Nay, if we carry neurological refinements to an extreme, it might be plausibly argued that excitability or a violent temper is proof of a defective organization of the nervous system, and that therefore no one ought to be held responsible for any impulsive action. Where this plea of "volitional insanity" is brought into court, the point to be decided is, as Maudsley has said, "Whether the impulse was really irresistible or whether it was only unresisted;" or, as the present writer phrased it

* "Insanity in its Relations to Crime."

† "Diseases of the Nervous System," 6th edition, 1876.

three years earlier,* "The question to be solved in such a case is not the *difficulty* but the *impossibility*, of resisting an emotional impulse. . . . . Frequently the impulse is rendered 'irresistible' by the absence of a sufficiently strong motive to resist it. A well-bred man may preserve his coolness under an insult in the presence of ladies which he would be 'irresistibly' impelled to resent on the spot if offered elsewhere; and even in the case of an undoubtedly insane impulse, it may be questioned whether the certainty of legal penalties would not often turn the wavering scale in favor of self-control."

Finally, we have the juryman's puzzle, invented by Prichard forty years ago, under the title of "moral insanity"—a title which, as our knowledge of mental disease advances, is less and less frequently met with in medical literature. In such cases we are asked to declare criminals irresponsible solely because their conduct "appears to be governed by immoral motives which are cherished and obeyed without any evident desire to resist them," although "their mental resources seem to be greater sometimes than when they were well, and they reason most acutely, apparently because all their intellectual faculties are applied to the justification and gratification of their selfish desires." Now, whilst it is beyond dispute that moral perversion may be among the early symptoms of various forms of insanity, we may, with Blandford, "deny that the absence of the moral sense proves or constitutes insanity, any more than its presence proves sanity;" and the same author adds: "Probably greater wickedness is daily perpetrated by sane than ever was committed by insane men and women; so that when immorality makes us question a man's state of mind, it must be remembered that insanity, if it exists, is to be demonstrated by other mental symptoms and concomitant facts and circumstances, and not by the act of wickedness alone." So, too, Maudsley (who is almost alone among modern writers in adhering to a separate classification) avows that "the vicious act or crime is not itself proof of insanity; it must, in order to establish moral insanity, be traced from disease through

* *New York Medical Gazette*, May 27th, 1871.

a proper train of symptoms, just as the acts of a sane man are deduced from his motives; and the evidence of disease will be found in the entire history of the case." In short, this so-called moral insanity, as an analysis of Prichard's own cases shows, is but an isolated symptom of more general diseases, the term embracing, in Hammond's words, "several species which are now more properly placed under other heads;"* or, to speak more accurately, perhaps, referring, in the majority of examples, to certain stages of otherwise defined mental disorders. But even granting, in any given case, the insanity in other respects of a culprit whose reasoning powers are for the time unimpaired, and who deliberately "gratifies his selfish desires," with capacity to understand the consequences of his acts, the question remains whether he should be exempt from punishment, and this question common sense must answer in the negative, unless we are prepared—and with much better reason—also to exculpate all sane criminals whose moral sense has been blunted by early training and association. In the latter case the mental condition is as far, or sometimes farther, from a healthy standard, as in the former.

It would have been easy to multiply quotations from recognized authorities in support of the views herein advanced; but it has seemed preferable to cite recent works by writers who are oftenest referred to by counsel for the defense; and if large use has been made of Maudsley's statements, it is because he, of all living alienists, is most inclined to seek mental palliation for criminal actions. From all that has been said, it is evident that acts of violence committed by persons of unsound mind are divisible into two general classes: those which are purposeless and automatic, or of which the purpose would be justifiable if the lunatic's premises were true, and those which are prompted by a conscious intent to do wrong. In the former class of cases there can be no doubt of the actor's irresponsibility; in the latter, neither ethics nor justice demand his absolution. We might, perhaps, stretch a point in sympathy

* "Diseases of the Nervous System."

with the concomitant mental unsoundness, and refrain from inflicting the death penalty; but we should see to it that the intentional criminal lunatic shall not escape punishment altogether, as he is now allowed to do under our statutes. Even where murder is apparently motiveless, we should insist that the murderer be segregated from the community for life; since all authorities agree that "homicidal mania," from whatever cause arising, is very apt to recur. As it is, our laws (which accept the preposterous verdict that a man may be sane up to the very moment of committing a purposive crime and recover permanent sanity immediately thereafter, being the victim of brain disease only at the instant of the act) prescribe the farcical formality of sending the alleged lunatic to an asylum, whence he must be speedily released as "recovered." The difficulty of determining the motive of an action, or even the existence of insanity, is in many cases very great—in nearly all insuperable to the unprofessional observer—and there will always be room for medical experts in medico-legal cases; but there is no reason why these should confuse instead of simplifying legal proceedings. The wisest plan would be to refer all testimony concerning mental unsoundness to a permanently organized commission in lunacy, on whose report an intelligent decision might be reached. A step in the right direction was made in the New York Act of 1874, directing that the plea of insanity be received only at the time of arraignment, and empowering the court to appoint a commission of inquiry; but the appointment of such commission is optional instead of obligatory, and no guarantee is demanded as to the special qualifications of the temporary commissioners. Much, therefore, still remains to be done, to bring law and medicine into equitable harmony. Meanwhile, jurists and jurymen will do well to bear in mind that insanity, if genuine, is shown in other ways than by a single action; that "hypothetical questions" are useless, each case requiring thorough and painstaking examination on its own individual merits; and, lastly, that a person whom no physician would hesitate to pronounce insane, may, nevertheless, commit crime with a reasoningly culpable purpose.

The Union of Public Charities and Correction in New York City.

By SAMUEL A RABORG, M. D.*

When emigration brings a number of settlers to any one point they naturally band together: in the first place, for the purpose of trade and the ordinary amenities of life; and secondly, for mutual protection against those who are viciously disposed, in one way or another, to infringe upon the rights of their neighbors. There is also in every community a certain percentage of the people who are, through physical disability, mental inaptitude or other causes, unable to provide for themselves. These are entirely distinct from the last class. They are the ones who are ground down by the unjust wheel of misfortune or circumstance, and these also are to be provided for.

In looking back through the dim vista of over two centuries, we find that on the 2d of February, 1657, the first charter for this City of New York on record was granted by the Dutch Government to the few thousand people who originally came, principally from Holland, and started our present metropolis on the lower portion of Manhattan Island, and in the immediate vicinity of the Battery.

This charter, however, was very limited and imperfect; the most striking feature of it was the division of the inhabitants into "great and small citizens." The former included the members of the government and their descendants in the male line, ministers of the Gospel, etc. The latter, all who "resided within the city during a year and six weeks, and kept their fire and lights."

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* Read before the Medico-Legal Society, March 7th, 1877.

In the year 1686 we find that George the Second, by the grace of God, of Great Britain and Ireland, King, defender of the faith, etc., issued the following:

"To all whom these present letters shall come, greeting. Whereas, on the 22d day of April, in the year of our Lord one thousand six hundred and eighty six, Thomas Dougan, the Lieutenant Governor and Vice-Admiral of New York and its dependencies, under our predecessor James (the Second), then King of England, did make and execute a certain grant, etc."

This charter goes on to speak of New York as "an ancient city, and body corporate, possessing divers lands and franchises not only from the English but from several Dutch Governors, while the province was under their jurisdiction." After giving several sections devoted to municipal authority, we find the original power vested in certain officers to have charge of criminals and paupers—they read as follows: "And further we do for us, our heirs and successors, grant unto the said Mayor, Aldermen and commonalty, and their successors forever, full power and authority to erect and build, or appropriate any other buildings already built, for one or more bridewell or bridewells, house or houses of correction, and workhouse or workhouses; together with full power and authority to the said Mayor, Recorder and Aldermen, or any one of them, to take up and arrest, or order to be taken up and arrested, all or any rogues, stragglers and idle and suspicious persons; and as they, the said Mayor, Recorder or Aldermen, or any one of them, shall see cause, to order all or any such rogues, vagabonds, stragglers and idle and suspicious persons, either to the said workhouse, there to remain, and work such work, and so long, not exceeding forty days, or else to bridewell or house of correction, there to receive such punishment, not extending to the loss of life or limb, as the said Mayor, Recorder and Aldermen, or any one of them, shall think fit. And also that they, the said Mayor, Aldermen and commonality, and their successors forever, may, and shall have power to build, erect or appropriate any of their buildings already built for an almshouse, for the relief of the poor, together also with as full

and ample power to them, and their successors, to order, direct, and act in and about the said houses of correction, workhouses and almshouses, and the persons to be put in and ordered there, as to any city or corporation in any place of that part of our realm of Great Britain called England, and the officers or ministers thereof, doth or may belong." Immediately after this, in the same section, power is given to the same officers to have or erect one or *more jails, as necessity requires.*

At this time the good people who framed this charter did not dream that this was to become the metropolis of North America, and one of the largest cites of the world.

So, for nearly two centuries, from 1686, when Governor Dougan, by his charter, gave the supervision of the Bridewell, almshouse and jail to the Mayor, Recorder and Aldermen, when with a thrifty Dutch settlement the probability is neither of them was required except in rare instances, until to-day, when the needy and poor of our city far exceed the entire population, years after this charter became a law, the same combination is made of criminals and paupers, under the supervision of the Commissioners of Charities and Correction.

It is our province to enter a protest against its continuance—first, on the ground of humanity; and second, in the light of political economy.

We will first glance at the different forms of government by which these two classes have been controlled since the organization of the city.

In 1673—thirteen years before the Dougan Charter became a law—the population of Manhattan Island only numbered 2,500 souls.

For a long time after the establishment of the charter referred to, the care of the charitable and correctional institutions remained under the charge of the Mayor, Recorder and Aldermen. In 1778 the city contained, according to Mr. Hugh Gain's Universal Register, about 4,200 houses, and 30,000 inhabitants. In 1800 the population had increased to 60,489. This was one hundred and ninety-one years after Hendrick Hudson, in trading for the Dutch East India Company, first touched the soil of Manhattan Island.

"We find in a "Treatise on the Corporation," published by Murray Hoffman, a novel project for raising money to build a new almshouse in 1794. On the 20th day of January of that year, a petition was presented to the Legislature for leave to raise £10,000 by lottery to construct a new building for an almshouse. On the 6th of April, 1795, an Act of the Legislature was passed authorizing such lottery, for the purpose of raising the before-mentioned sum. In the year 1814 the Corporation established the almshouse at Bellevue, upon their own ground. Some time after this period, the number of paupers and criminals of the city having grown in proportion to the population, the care of these institutions was turned over to a commissioner, called the Commissioner of the Almshouse.

It is difficult to trace the course pursued by the early officials of this city, as no reports of their work were published prior to the year 1831. It is at this period, also, that we find the first printed reports of the proceedings of the Board of Aldermen. It is next to impossible to deciper the Dutch MSS.

Moses G. Leonard, Esq., was commissioner in 1848, and with that year the government of these institutions was changed. In his report he states that the sum of "$403,307.83 has been spent during the last twelve months for their support."

On the 8th of May, 1844, an Act was passed by the State Legislature placing these institutions under a Board of ten Governors. The first appointed were Wm. T. Pinckney, Isaac Townsend, Simeon Draper, Francis R. Tillow, Jonathan L. Coddington, Wm. M. Evarts, Richard S. Williams, Timothy Daly, Schureman Halsted and Peter McLoughlin. The institutions placed under the supervision of this Board were :

1. The Department of the Outdoor Poor.

2. The City Prisons, three in number, viz.: At Halls of Justice, Centre Street ; Jefferson Market, Greenwich Avenue ; and Essex Market, Grand Street.

3. The Bellevue Hospital.
4. The Penitentiary.
5. The Almshouse.
6. The Lunatic Asylum.

} Blackwell's Island.

And 7. The Nurseries on Randall's Island.

Also, by the Act passed April 11th, 1849, a workhouse was established and placed under the control of this Board.

In the last report of the Governors for 1859, the net amount paid for the support of the institutions was $597,835.07.

January 1st, 1861, we have the first report of the Commissioners of Public Charities and Corrections. They were appointed under the law passed April 17th, 1860. They were Simeon Draper, Isaac Bell, Jr., Moses H. Grinnell and James B. Nicholson.

In their first report, page 9, they say: "It will be seen that important changes have been made in the general administration of the affairs of the Department, a large reduction has been made in the number of employees, etc., etc. Important changes in almost every institution have been made, affecting their economy as well as their proper government. The Nursery of Infants in the city has been abandoned, and the care of them placed in responsible hands in the Almshouse Department."

By an Act passed May 5th, 1870, this Department was reorganized, and Mayor A. Oakey Hall appointed the following five Commissioners to superintend it, viz.: Isaac Bell, O. W. Brennan, James Bowen, James B. Nicholson and Alexander Frear. At this time there were five general hospitals for surgical and medical cases, besides the Bureau for the Treatment of the Outdoor Sick, and six special hospitals for specific and contagious diseases. The number of patients treated in the general hospitals was 18,919, and in the special hospitals 4,405; total, 23,324. At the Morgue, this year, there were received 174 bodies, of which only 89 were identified by friends.

Again, in 1875, this department was reorganized and placed under the control of Commissioners Thomas Brennan, Isaac H. Bailey and Townsend Cox. By their

report for that year, "The city charitable and correctional institutions had an average population of 10,664," and "62,395 persons were relieved by the Outdoor Department."

From this condensed statement of expenditures for the year, we find that for the support of these institutions, repairs, etc., they spent $1,286,206.66.

It is easily seen by these figures to what magnitude these classes have grown.

Outdoor Sleepers.—An immense sensation was made in London some years ago, when some philanthropist discovered that at least one hundred persons, hungry, destitute, and almost naked, slept each night in the private parks fronting the elegant mansions of the rich. Still this can be seen every night in our city by any one who will pass through Madison or other squares after eleven o'clock And these poor, desolate wretches have no place to resort to in this great city but to the station-houses.

Some two or three years ago I went down town after midnight, and with a pass from the Police Department saw the true state of these night lodgers, and it is difficult to picture the reality of their condition. In one station-house I found the men so densely packed together on the floor that they actually covered it—it could not been seen at all.

In another, a captain pointed me out a cell where he had allowed a poor woman and two children, who had been forced into the street by a drunken husband, to remain all night, as "he felt so sorry for her," and the cell was so much more comfortable than the lodgers' room. There is no question that a great many of these people are not deserving, that they are confirmed vagabonds, tramps and petty thieves; but all such should be arrested and placed in the workhouse and forced to make an honest living. But this is no reason why the truly poor and unfortunate should be neglected. From the Police Report of 1875, we find that there were during that year two hundred and seventeen thousand five hundred and five who sought this shelter. During the last winter some private efforts were made to supply this need; but we shall eventually have to do as they have done in London: by private philanthropic efforts erect

night lodging-houses in certain districts where they are most needed, with appurtenances for cleanliness, where proper discrimination can be used, and where those who are really the children of misfortune may find a place to rest their weary bodies for a night in peace and comfort. Surely the familiarity with the station-houses, brought about by the the present system, must have a most unsortunate influence not only on the truly deserving, but particularly on those who have only taken the first steps in the downward path of crime and dissipation.

The Poor and the Vicious.—These pictures may seem exaggerated, but few persons in this great metropolis are aware of how intimately criminals are thrown with the poor in many of our public institutions. On Blackwell's Island a young, innocent girl may occupy the next bed to a woman who represents the worst and most degraded class of her sex to be found in this city. Much of the menial work at Bellevue and Charity Hospitals is done by women and men committed to the workhouse for intoxication and other offenses.

Some of the nurses are or have been confined in the same institutions. And worst of all is the association of these buildings for reformatory and charitable purposes on Blackwell's Island felt by the honest poor. It is a fact well known to every physician in this city, that the majority in this class will starve on a bare crust of bread in a miserable tenement, rather than go to this much-dreaded island. When Dr. W. W. Sanger was appointed Resident Physician to the Charity Hospital, or, as it was then termed, the Penitentiary Hospital, he reported that "in the year 1854 there were 3,734 admissions. Of these, debauch and delirium tremens furnished 25 per cent. of the gross number, and 37 per cent. was due to syphilis. It will thus be observed that 72 per cent. of all cases under treatment were directly caused by the lowest and foulest kind of dissipation and vice." In a protest he made to the authorities, of this combination of the sick with criminals, we find the following: "Is it necessary, or must it be, that human beings laboring under the effects of drink, syphilis, ulcers and all forms of disease,

while being medically treated, shall undergo a process of being made into thieves, to prey on the community when discharged?"

We all know that when a person is poor, friendless and an outcast, he must at times have feelings of antagonism against his more fortunate fellow-beings. When in this condition, desperate, despairing, and apparently God-forsaken, can anything be more pernicious than to place him in contact and under the influence of criminals—those who are corrupt in nature, vicious in propensities, and deliberately defiant of all laws of God and man? Every instinct of humanity, every throb of the great heart of charity, every impulse of the noble men and women who devote themselves to the amelioration of the misfortunes of their fellow-beings, must be averse to this connection; the principle is wrong and but begets criminals.

The true political economy here, would surely be to elevate these people by showing them that there is nothing degrading in being unfortunate and poor; to stimulate them with a noble desire to work and do for themselves; to surround them with elevating and refining influences—in other words, to make them *producers instead of consumers.*

What Should be the Policy of a Great City Toward its Poor?—This is a question that has been agitated by the greatest humanitarians, philanthropists and politicians for centuries past in Europe. Let us then first glance at the systems now in vogue in the two most noted capitals in the world to-day, for humanity, civilization and culture—viz., London and Paris.

In the former city, London, for six centuries, different charitable institutions have from time to time been endowed by opulent citizens, under the English law of bequests.

Their endowments are considered so sacred that no person can disturb or alter them. Some of them have grown to enormous proportions, by the advance of real estate and the gradual accumulation of interest. As a rule, they have been placed under the control of Governors or Trustees of such character as the donor dictated in his bequest. London, at

the accession of James the First, was said to contain little more than 150,000 inhabitants.

Before the Restoration of Charles II., in 1660, says Sir William Petty, "the people of Paris were more than those of London and Dublin put together; whereas now (1687) the people of London are more than those of Paris and Rome." In 1682 there were about 670,000 souls in London; in 1801, 864,845; and in 1841, 1,870,727. In 1843, according to the work by Charles Knight on London, there was at that period an annual income of £310,000 a year in London alone, from the bequests left by generous donors for the various city charities, and, "altogether, there is a total of upwards of £384,000 of the annual income arising from property in the Metropolitan County, which is devoted to purposes of charity and education." "When Lawrence Sheriff, grocer and citizen of London, left the third part of a field of 24 acres in the parish of Holborn, for the endowment of a grammar school at Rughby, it produced only £8 a year. This field was called the 'conduit close,' and was nearly half a mile from any house. It is now covered with buildings, and the rental exceeds £10,000 a year." The almshouses in England are intended as asylums for the aged and infirm. Mr. Knight says: "The almshouses in London are probably not far short of one hundred and fifty." These are chiefly maintained by endowments left in trust to city companies. It must be remembered, however, in speaking of so large a number of these institutions, that they, as a rule, contain accommodations for very few persons, and were founded by trades or guilds for the use of their own brethren. The Drapers' Almshouses are amongst the earliest foundations of this kind, started in 1522.

In 1593 the merchant tailors erected seven almshouses for fourteen poor widows on Tower Hill. The result of the promiscuous character of so many charitable societies in London is, however, keenly felt. A story is told of a widow who availed herself, by intrigue, of placing an entire family of children in the different orphan asylums, when she was more than aptly able to provide for them herself. These are the London Orphan Asylum, the Female Orphan, the

British Orphan, the Infant Orphan, the Orphan Working, the Sailors' Female Orphan, the Merchants' Sailors' Orphan, the Incorporated Clergy Orphan, and the Army Medical Officers' Orphan. There are five Royal Hospitals, commonly known as such, and designated, "'The Royal Hospitals of the City of London,' under the pious care of the Right Honorable the Lord Mayor, Aldermen, and Governors thereof." They are—St. Bartholomew's, Christ's Hospital, St. Thomas', Bridewell and Bethlehem. There are twelve general medical hospitals in London, including the above; the most of them have been endowed by rich and charitable persons. The total income of St. Bartholomew's Hospital, in 1850, was £32,000, while in 1544 it was dependent upon an income of only £371.* One of the most remarkable instances of generosity known to the world, was the establishment of Guy's Hospital, Southwark. It was founded in 1724 for sick and diseased poor persons; its accommodation is 580 beds. Some 50,000 persons receive here annually medical relief.

The Lunatic House is a department peculiar to this hospital. The usual number of patients is from twenty to thirty, as provided for by the founder. They have spacious grounds for their use behind the hospital. This establishment was founded at the sole cost and charges of Thomas Guy, Esq., a rich bookseller of Lombard Street, who spent upwards of £18,000 on the building during his life-time, and endowed it with the sum of £210,429—the largest sum that has ever been left by an individual to charitable purposes. In 1829 Mr. Hurst, a gentleman residing in Petersham, left £200,000 to the same hospital, stipulating for a provision of additional accommodation for 100 patients. Mr. Low, in speaking of the London charities, says: "It only remains for us to premise, that institutions of a minor character, but kindred in design to the foregoing, are constantly making their appearance before the public, under slight variations of title and claims to support; proving often, however, to be attempts only of individuals either for the development of

* "Charities of London." Sampson, Low & Co.

peculiar systems of treatment, or for the extension of fame and practice." According to the same author, in 1850 the population of London was 2,200,000, and from them the twelve general medical hospitals had an income derived from voluntary contributions of £31,265, and an income from funded property or otherwise secured of £111,641. There were fifty medical charities for special purposes, with voluntary contributions of £27,974, and from funded property £68,690. There were thirty-five general dispensaries, with voluntary contributions of £11,470, and from funded property £2,954.

The entire amount devoted to charity that year in London was, by voluntary contributions £1,022,864, and from funded property £741,869 This, of course, includes asylums for orphans, houses for the aged, school societies, Bible and missionary societies, etc. On the 31st of March, 1840, the House of Commons ordered a digest prepared of all the charities of the United Kingdom; this was published in parts by John W. Parker, of West Street, in 1843. In the report of the Commissioners who performed this labor we find: "In preparing this (third) part of the return, it has been presumed that the object of the order was to obtain a summary of those charities which are, or may be liable to be, distributed indiscriminately amongst the poor (the evil tendency of charities of this description having been frequently the topic of observation)." With this array of institutes, I desire to say a word about the prisons of London They show the same miscellaneous character as the charities, and, from the same system of bequests, are so differently governed with regard to severity of discipline, that it is said it is difficult for the judges on circuit in England to know for how long a period to condemn a criminal to prison, as two weeks in one is frequently greater punishment than two months in another. For instance: Coldbath Fields Prison or House of Correction, in the Parish of St. James, Clarkenwell, between the Church and Gray's Inn Road, is under the jurisdiction of fourteen magistrates, appointed at each quarter sessions, of whom four go out quarterly by rotation. It is for criminals from all parts of the County of Middlesex.

The number confined here is in the neighborhood of 12,000 annually. The discipline enforced is that called the "silent system," the prisoners working in bodies, and silence being preserved by great vigilance on the part of the officials. The convict is not allowed to receive a letter during the first six months of his incarceration, and after that only one letter a month. Some of the prisons in London, to the contrary, are very lax, allowing card-playing, idleness and beer-drinking. Some are under the charge of one or more Governors, and others directly controlled by the Lord Mayor and Aldermen. This depends greatly upon the character of the support of the institution; as, for instance, Bridewell, within the city of London, is under the jurisdiction of the Governor of Bridewell and Bethlehem Hospitals, and is supported out of the funds of these hospitals.

The nursing in the English hospitals is peculiar. Some few are in charge of religious orders, but the majority are cared for by hired help. An innovation of late years is to make a character of sisterhood in each establishment. When a woman first applies for the position of nurse, if she is of proper character and brings good references, she is made an assistant; this position she occupies with a stated salary for two years. At the expiration of that time, if she has served satisfactorily, she is made a full sister, with increased compensation, and two assistant nurses are placed under her control.

In transferring our attention to Paris, we find a very different condition in the public institutions.

In Knight's "Pictorial London," it is stated that in 1840 one-third of the deaths in Paris occurred in the hospitals (or 9,338 out of 28,294); but in London, the same year, the proportion was only one in nineteen (or 2,358 out of 46,281). Knight says: "The domestic feeling or prejudice, if we like to call it so, of the English people, is generally adverse to that public association which is inevitable in an hospital; but in reality there is a great deal in the fact that although the London hospitals are so numerous, their capacity is very limited, and on every 'taking-in day,' a large number of persons are unable to obtain admission."

The truth really is, that the hospitals of Paris are differently conducted. In the early days of that city, private parties endowed some institutions of the same character of those found in London, but the monster, Revolution, has so many times swept over the face of that most beautiful and attractive city of the world, and at such times entirely disregarding law and the rights of property, that we find to-day a very wise concentration and arrangement of the institutions of charity; probably not akin with the intention of the original donors, but much more beneficial for the recipients of their bounty. By a decree of the French Convention, passed July 16th, 1793, part of the patients of the hospitals of Paris were transferred to convents, or other structures which had become national property. By subsequent decrees, the superintendence of hospitals was vested in sixteen members of the National Assembly. By a decree of January 10th, 1849, everything relating to public assistance has been placed under a special administration called *Administration Generale de l'Assistance a Paris.* It is under the control of the Minister of the Interior, and is managed by a Director and a *Conseil de Surveillance* of twenty members, presided over by the *Prefects of the Seine and of Police.* There are in France 1,333 hospitals, the revenues of which amount to 53,662,992 francs For the year ending December 31st, 1854, in the general and special hospitals, there were admitted 68,863 medical and 25,952 surgical cases. There were 10 479 deaths in the medical wards, and 1,312 in the surgical wards. In 1854 the net receipts were 14,894,220 francs; expenditures 16,047,037 francs; deficiency, 1,152,817 francs. Paris' annual contribution for that year was 267,397 francs.

It will be a surprise to many, to hear that so large a proportion of the deaths of Paris as one-third occur in the public hospitals, while in London only one of every nineteen takes place in these institutions. Two causes, however, account for this. In the first place, the people of these two capitals are very different in their tastes and inclinations as regards home life The Parisians live largely in the streets; they are fond of congregating together, and of fun and pleasure.

The Londoners, on the contrary, care more for their own hearth-stone. No matter how poor the artisan or mechanic, he tries to have a roof of his own. The difference in climate no doubt has much to do with these peculiarities of the two races; but more than this is the great difference in which these institutions are regarded in the two cities, and the vast dissimilarity in their management. The Parisian loves the hospital, be he rich or poor. If of the former, he gives freely of his means towards its support; if of the latter, he looks forward to it as a safe refuge when his days are to end by disease and suffering, when his every want will be ministered unto by the gentle hand of the patient sister of charity, and where his soul can leave its earthly tenement in peace with God and man. The Londoner, on the contrary, regards these institutions as a *dernier ressort* for the outcasts and unfortunates of society, and gives to them as a matter of necessity or duty.

In this connection it is well to say a word in approbation of the noble self-abnegation, the utiring devotion, the patience and gentle kindness of the noble women who band themselves under church organizations to devote their lives as nurses in these institutions.

Every one who has had any experience on this subject knows the infinite superiority of the ladies over hired nurses; and this is natural, as the first do their work without compensation, and for love of the Great Master, while the others are simply stimulated by the miserable stipend they receive monthly for their labor. In this noble country, so far, the sisterhoods under the Catholic Church have done noble work; at St. Luke's Hospital an Episcopal sisterhood has proven most effective; and the recent action of Mayor Wickham and others, in establishing the school for training nurses cannot be spoken of with too much commendation, as they have rendered a great service to the city and to humanity.

I have detailed the statistics of London and Paris to see what information we can gain from them, for the guidance of our future towards these unfortunate classes.

We are young as a city compared to either, and still our growth is apparently to be as rapid, and probably, from

present indications, gigantic, as either. From the points I have given you, it will be seen that in London in 1850, with a population of 2,200,000 souls, £1,764,733 or about $8,541,-407.72, were spent for the support of all these classes ; while by the Report of the Board of United Charities for 1877, we, with a population of something over one million, spent $5,588,000 for these same classes, and in this report the expenses of several institutions are not given, so that we might estimate that at least six millions of dollars were spent in this city last year for those purposes. This, then, is already very much in excess of the expenditures in proportion to London.

IS IT NOT WISE FOR US TO HESITATE HERE, AND THINK OF THE FUTURE?—History in all ages has proven that the pauper and criminal population of a country grow with its growth. Would it not be noble for us to adopt a plan by which we would have a less percentage of these classes than other countries? Would it not be a grand illustration of the working of our Great Republican country, to show that we have raised the poor, the unfortunate and even the vagrants to become honest, hard-working citizens? How is this to be done ? In the first place, let us separate crime from poverty, by appointing one Commissioner of Charity, and placing the department of corrections where it belongs, in the hands of the police authorities. This commissioner should be assisted by a council of gentlemen from different religious denominations or philanthropic societies, say of twelve members.

There are plenty of these who would serve in such a position without compensation.

This commissioner and these gentlemen should be appointed for their fitness for the position, and without any regard to their political affiliations. In no large city of the world are the charities hampered as they are here by political considerations. At the fifth annual meeting of the State Charities Aid Association, held on the first of this month, a report was submitted which stated: "The Association *prays* for the removal of our pauper hospitals from political influence. In Bellevue Hospital the pauper distribution of supplies is neglected, and the drugs are so bad in quality

that their medical qualities cannot be counted upon. In some wards of Bellevue Hospital potatoes were given last fall but six times in two weeks, the condensed milk was often so watered as to furnish no adequate nutriment, and there was a constant deficiency in bed linen." When we see by the report of the Board of United Charities for the last year that $120,874.73 were spent on this institution, the above seems incredible. The fifth annual report of the local visiting committee for Bellevue and other public hospitals of the city of New York states: "The administration of the Department of Public Charities and Corrections has properly nothing to do with politics; yet, like every other department of the City Government, it is simply a machine.

"There is not an appointment, from that of the commissioners to the lowest subordinate, which may not have a political significance, and while the system lasts the results must be the same." Further on the report states:

"When the citizens of New York determine that their public charities are not to be managed with reference to partisan politics, but on enlightened philanthropic principles, we shall have the right administration, and not till then." These expressions, coming from noble men and women engaged without compensation in this work, should receive proper consideration. As long as this condition lasts we will have the same miscellaneous character of charities as to-day exists in England. How is it to be expected that private persons will leave fortunes in the hands of politicians to disburse, knowing well it will be used for partisan purposes? How much better and more economical for their future distribution, to establish a non-partisan and philanthropic management for these institutions, which will at once command the confidence of those who desire to bequeath means for such purposes. Of course private beneficence and generosity cannot be interfered with, and should not be, particularly in a free country like ours; but much can be done to utilize this, to educate the benefactors, who are generally engrossed with business cares and anxieties, as to the true policy of disposing of their charities. There are surely enough gentlemen in this city who have already

demonstrated their disinterested devotion in this cause, and who are allied to no political rings or cliques, to select a commissioner from—such men as Mr. Henry L. Hoguet, Mr. Theodore Roosevelt and Mr. Henry E. Pellew, and others of this kind, would give universal satisfaction.

In the parishes of England a rule is adopted which should be in vogue here. At every poor-house a register is kept of the poor of the district, and if they wander off and apply for assistance in another district they are returned to be taken care of at their original homes. If this system were adopted in New York it would save much time and trouble. There is a dispensary in almost every district in the city: if these institutions were obliged to keep a register alphabetically arranged of their own poor, much better facility would be given the authorities to get at the truly deserving. In this connection it would be necessary for this commissioner and his council to have full power to investigate at least twice annually all local charities receiving money from the city.

It is very evident, after the developments recently made, that all local charities receiving money from the excise or other funds should be under the supervision of some absolute authority.

Such charities should be required at least semi-annually to show their books and the general working of their organization to a committee appointed for this service.

Furthermore, unquestionably those who are doing an honest and philanthropic work will court this inquiry, as it would give the result of their labors to the public, and thus increase their donations from charitably-inclined citizens.

And again, no new charities should be started in any section of the city, if they expected to receive municipal assistance, without the consent of the commissioner. There is a great deal of money spent in unnecessary institutions. If a dispensary is in a certain district and has a house already rented, books containing the names of the poor of the district, and other necessary conveniences, why start another charity around the corner, or in the next block, which could be coalesced with the first with great benefit, and with a decided saving of the money intended for the poor?

"I scruple not to affirm," says Howard, the great philanthropist, "that half the robberies committed in and about London are planned in the prisons by that dreadful assemblage of criminals and the number of idle people who visit them." This is most plainly shown in our city. Young persons, the victim of indiscretion or misfortune, come in contact with those who are confirmed thieves, vagabonds and criminals. What is to be expected from such? Who cannot picture their future?—taught by those vile associates that it is easier to steal than to work, insidious arguments plied to them that it is more distinguished, more honorable, to be gentlemen of the road, sneak thieves and villains, than to be honest, hard-working citizens. Whom have we to blame but ourselves, for the increase of the criminal classes, when we throw the young, the weak, the homeless, and the most pliable portion of our population, into the position which almost forces them to ally themselves against law, order and society? Much of the improvement in Newgate and other prisons in London is due to the noble efforts of Miss Fry, who strenuously and for years devoted her time to preventing the association of young women incarcerated for small offenses and indiscretions with hardened criminals. All annals of such institutions which have existed in civilized times prove the frightful result of such a connection, and every philanthropist who has ever inquired into or written on the subject, has pointed out the frightful folly of allowing such association.

We are at present promised a more economical arrangement of our city departments by the Legislature. We may not hope that they will draw a wide line of demarkation between criminals and paupers?

Confining the truly vicious by themselves; placing tramps, drunkards and vagabonds in the workhouse, where they will be obliged "to earn their bread by the sweat of their brows," and, last of all, teaching the poor to look upward to a better state, encouraging them to earn an honest livelihood and become useful citizens. With this accomplished, we would have attained a higher scale of civilization than has yet been reached, even in this much-vaunted nineteenth century.

E. W. Stoughton

Edwin W. Stoughton.

Mr. Stoughton was born in Springfield, Vermont, May 1, 1818, and lived there until the age of eighteen years, when he removed to the city of New York, where he spent the remainder of his life.

He did not have the full advantages in his youth of the New England common schools, and the selection of the profession of the law made his task all the more arduous. Thorough, energetic, persistent study and application, however, brought him into the front rank of the legal profession, and it will not be questioned that Mr. Stoughton, in the full vigor of his professional life, in that department in which he was most distinguished, was one of the acknowledged leaders of the New York Bar.

He married Mary Fiske, March 3, 1855, who survives him; the union was, as we believe, childless.

He joined the Medico-Legal Society in 1874, and while he made no contribution of articles or papers, he was always greatly interested in the science, and in the success of the Society.

Mr. Stoughton devoted himself in the early part of his professional career closely to the practice of the law, avoiding political life, for which he had little taste; but in the fall of 1877 he yielded to the claims of the Administration and accepted the Russian Mission, remaining at St. Petersburg nearly two years, when, his health failing, he was ordered by his physician to try the climate of Italy.

In the administration of the Russian Mission Mr. Stoughton gave great satisfaction to his Government, and was deservedly popular with the country.

Continued failing health forced him to retire from public

life, and he resumed the practice of law, in which he continued until his death, June 7, 1882.

Mr. Stoughton was a most conspicuous example of a self-made man. He had a fine physique, was of impressive and commanding appearance, of most agreeable manners, and was noted in the senior bar for the princely entertainments he gave to the judges or distinguished lawyers visiting New York.

No man at our bar had warmer and more devoted friends who were attracted to him by his genial disposition and lovely character.

The Medico-Legal Society, as well as the profession of the law, sustained a great loss in the death of Mr. Stoughton.

TESTAMENTARY CAPACITY

By ISAAC RAY, M. D.*

Author of "Mental Pathology," "Mental Hygiene," etc., etc.

To the question, What shall become of a man's property after death? The law of our country and our civilized people, in recognition of what was deemed by the old jurists as a *jus naturale*, replies, that he may dispose of it himself before he dies, under some limitations required by a regard for the rights of others. It only requires that when exercising this right he should be of sound mind; and this leads to the inquiry, What is meant by a sound mind? At first blush this would seem to be a strictly medical question, and, so regarding it, the physician considers it as a matter of health or disease, of normal or abnormal condition. The jurist, on the other hand, ignoring entirely the physical element implied in the question, considers it solely as a matter of mental capacity. As in cases that come into litigation both parties urge their views as the proper guide to the ultimate decision, discrepancy and conflict must naturally follow. Much of this diversity of views arose on both sides, undoubtedly, from a very imperfect knowledge of the subject matter itself, as the slightest examination will show.

From the earliest times the law has recognized insanity as a disturbing element in human conduct, and allowed it to modify, more or less, its administration of justice. Therefore, the question of questions on this subject is, how far, and in what manner, this disturbing influence really extends. To answer this question, resort has been had to two sources of instruction. One is, that observation of the in-

* Read before the New York Medico-Legal Society, June 13th, 1877.

sane which any one may make in the ordinary walks of life. While we admit that much may possibly be learned in this way, yet it is no less certain that impressions thus obtained are quite unreliable for any practical purpose. A very few cases can only come under the cognizance of any individual, and the notice taken of them must necessarily be hasty and superficial. The more demonstrative symptoms only will arrest the attention, while the less obvious, though, perhaps, more significant, may be overlooked altogether. Neither in this way is there any element of progress. No amount of attainment leads to fresh attainment. It lives and dies with him who makes it. Observers more sagacious than Shakespeare and Walter Scott can scarcely be expected. And yet the current ideas respecting insanity are chiefly derived from this source.

The other source of information is that, where insanity is studied as a disease, in the spirit and methods of a scientific inquiry. Here not a few only, but all its phenomena are observed. Its various phases, as presented from day to day, from month to month, and from year to year, in the different grades and stages, are carefully studied, with the abundant facilities afforded by the modern hospital for the insane. The study of the physiological and pathological laws by which it is governed, of the ancestral defects in which it originates, and of the adverse influences by which it is developed, throws light on the character of each individual case, without which we can scarcely avoid mistake.

Ideas derived from this quarter have always determined to some extent the rules and practices of the English law, not, however, without great resistance, especially in modern times. The classification of mental diseases, the terms and phrases found in medical books, were freely adopted into the civil law, with such practical consequences as they would naturally suggest. The psychological relations of the different forms of insanity were but little considered by the ancient physicians, and, of course, they could furnish the lawyers with little aid in the work respecting it which fell to them. Indeed it could not have been otherwise, for their means of learning about insanity were hardly better than those pos-

sessed by the world in general. Their ignorance of anatomy and physiology led to the crudest theories on the nature of disease, and their observation of its phenomena was directed by a false pathology, rather than by any methods of exact and patient inquiry. The only advantage they possessed over others in the study of insanity, consisted in the more close and continuous observation of individual cases which their professional duties required. Through the whole mediæval period, and long after the revival of learning, medical writers were content to abide by the notions of Celsus and Galen, and these were all they could offer to aid the lawyer and the law-giver in the administration of justice. By this aid, such as it was, the latter undertook to say how far and in what way insanity modifies the legal consequences of human conduct. To simplify the process, they found it convenient to consider the disease in its different forms, or, more correctly speaking, in its different grades of apparent severity. The first systematic attempt of this kind was made by Lord Coke, who recognized four descriptions of persons as being *non compos mentis*—viz: idiots; those who, by sickness, grief or other accident, have wholly lost their memory and understanding; those called lunatics, who have sometimes their understanding and sometimes not; and lastly, those who, by their own vicious act, have deprived themselves for a time of their memory and understanding, such as drunkards. Rude as this classification is, it has some semblance of correctness; but, like the more elaborate rules and tests of more recent times, it labors under the defect of being difficult of application. It affords no help to settle the question whether, in a given case, the person concerned belongs to either of these classes. Regarded as a scientific formulary it is quite defective, because it ignores completely some well-recognized forms of mental disease. Many years afterwards, Lord Hale, availing himself of the more advanced medical knowledge of his time, corrected this defect in some degree, and ventured upon some rules for the settlement of the practical question. But, with all their defects, and in the face of the better knowledge of our times, the doctrine of these men still govern, in a considerable degree, the decisions of English and American courts

Unquestionably, they reflected and confirmed the prevalent sentiment which regarded the last will and testament as an instrument too sacred to be easily disturbed. And we know, as a matter of fact, how jealously it has been guarded from all assaults, and especially from such as were directed against the mental competence of the testator. Let us now examine the decisions of the courts in the new light shed upon the subject by the progress of medical science during the last two centuries, for within that period have occurred the two great discoveries of the circulation of the blood and of the functions of the nerves. And the same period has witnessed the establishment of multitudes of hospitals for the insane, affording opportunities for the clinical study of the disease, and for the observation of the ways, manners, conduct and conversation of the insane never enjoyed before.

In that form of mental disorder called acute mania, in which the mental movements are continuously strange, wild and incoherent—madness without method—the testamentary incompetence of the patient has never been questioned. Indeed, the condition is one in which we should hardly expect any disposition to make a will, and I am not aware that such a one has ever been offered for probate. Lord Coke, you observe, speaks of a description of lunatics who have sometimes understanding and sometimes not. This statement has reference to a phenomenon once supposed to be a very common occurrence—I mean that of lucid intervals, as they are called. So common were they thought to be, that in every case of alleged insanity, the question of a lucid interval was always raised as a matter of course. In fact, the practice has not yet entirely ceased. The idea is, that in most insane people reason returns at intervals, and with it their original competence and responsibility. The law not only supposes the probability of such a period, but the party availing himself of the plea of insanity was obliged to show—even though the burden of proof may not always have been put upon him directly—that there was no lucid interval. Considering how small a foundation this whole doctrine of lucid intervals has, it is difficult to account for its prevalence. Unquestionably, it sometimes happens that an insane person comes to himself,

manifesting his natural propriety of conduct and conversation, his memory and perception apparently clear, the cloud returning after a few days as dark and dense as before. Exactly how far the mind in this condition is free from the influence of disease we never can know. Considering, however, the suddenness of the change, the brevity of its duration, and the long continuance of the disease when it occurs in chronic cases, it is not likely that the mind is restored to its normal degree of clearness. It must be borne in mind, also, that, as described by distinguished legal authorities, such intervals are of very rare occurrence. I have not seen more than half a dozen cases in all my experience. All nervous diseases are subject, more or less, to a certain law of periodicity, by reason of which at intervals their regular course is changed, and other incidents come and go in a certain order of succession. The change thus produced may sometimes amount to an entire disappearance of the signs of disease. This phenomenon is not unfrequently witnessed in the early stage of acute mania. Within the first month there may occur a rather sudden cessation of the manifestations of disease, in which the patient is calm, quiet, talks and behaves sensibly, though, if closely observed, there will be found some indistinctness of memory and confusion of thought, especially with reference to the circumstances of the attack. This condition has often been confounded with lucid intervals, especially by lawyers, who find it difficult to see a distinction which can be visible only to the long-practiced observer. To the common eye, any remission in which the patient is tolerably calm after being violent, and answers a few questions rationally, seems like a lucid interval.

Admitting, as I do, that a valid will may be made in the lucid interval, it is so likely that some shadow of disease may rest upon it, that any testamentary act during that period should be very closely scrutinized. Some qualifications for the act are required not otherwise needed. It should be shown that changes in the circumstances and conditions of those whom the testator is disposed to benefit, (having occurred when he was incapable of understanding and appreciating them,) were brought to his knowledge and

comprehension, since such things would naturally affect the dispositions of the will. Because it must be borne in mind that the past, for months or years, may have been a complete blank, or filled with strange and deceptive images. In short, we may conceive of a case where every testamentary qualification was possessed ; but certainly the fact must be of rare occurrence, and difficult of proof. I know of only one case reported of a will made in what was called improperly a lucid interval, and established, that of *Cartwright* v. *Cartwright*, 1 Phillimore, 90. The testator was in an asylum, and so severe was the grade of her disease, that she had restraint on her limbs at the moment when she called for pen, ink and paper in order to write her will. This she did at last, after writing one on several pieces of paper, which she tore up and threw into the grate, and walking up and down wildly, and muttering to herself. The will was established, the court deciding that it was made during a lucid interval, on the strength of the internal evidence, as it made a natural and consistent distribution of her property. This fact the court considered conclusive proof that a lucid interval had taken place. The result may have been right ; but it was reached by a sort of logic known as reasoning in a circle. The correctness of the will proves the interval, and the interval being proved, makes the will valid. Had the court, while squarely admitting the insanity of the testator, declared that the character of the act showed that she was still rational enough to make a valid will, it would have uttered good sense and good science. Here we see the binding influence of the old law as expounded by Coke. It being proved that the testator was a lunatic, she was necessarily *non compos*, and could become otherwise only by recovery or a lucid interval.

This influence has not yet entirely lost its force, for I observe that lawyers are not content with proving competence sufficient for the act in question, but also labor hard to prove also perfect soundness of mind. In a case that came under notice two or three years since, an attempt was made to void the contracts of a person recently deceased, on the ground of insanity. It was shown that the transaction—

the sale of coal lands—was just and fair in every particular; that he obtained a price pronounced by his neighbors and advisers to be a fair one; and that he sold, then and there, without waiting for a prospective rise in value, simply because he needed the money. That he was a lawyer in full practice, a leader at his bar almost up to the day of his death, and all the while the trusted counsellor of several large corporations—all this needed no proof, for it was seen by everybody. And yet, because of the admitted fact that this man had always been remarkably eccentric in his ways and manners, week after week was spent in endeavoring to show either that he was or was not technically insane. If the administration of the law has for its object the promotion of justice among men, we may venture to say that the means it used in this instance were signally irrelevant.

Farther examination of Coke's classification of the *non compos mentis*, furnishes fresh proof how little help it gave the medical jurist in settling the questions that came before him.

"One class," he says, "consists of those who, by sickness, grief or other accident, have wholly lost their memory and understanding." The word *wholly* is probably used inadvertently, because it would refer to persons in the very last stage of dementia, whose acts would scarcely become matter of litigation; whereas he had in mind, no doubt, a numerous class, who, while moving about among men, and taking some part in the affairs of life, are, nevertheless, laboring under considerable mental infirmity. We have reason to think that this class was meant to embrace the subjects of senile dementia, of the weakness of old age, and of the damage inflicted by paralysis and other cerebral affections. His allusion to grief and accident implies, probably, a mistaken notion he had conceived respecting the cause of the mental affection. Taken as a whole, this class, unquestionably, has always furnished the courts with a greater amount of litigation than all others put together, in the matter of wills. The more exact and well-defined are our notions of mental capacity, the more foundation they have in close personal observation of this class of persons, the better will

be our administration of justice. Much of the apparent conflict in the adjudication of their cases has arisen, I think, from a faulty appreciation of the mental qualities chiefly concerned; and therefore I invite your attention, for a moment, to this point.

Old age is usually accompanied by a certain enfeeblement of the mental as well as the bodily powers. This condition does not imply unsoundness or incompetence. It merely means a diminished power of endurance; an incapacity for those long sustained efforts once comparatively easy; more difficulty in grasping obscure and remote relations. The mind has lost none of its characteristic tastes, and none of its fondness for its accustomed pursuits; but it is satisfied with easier tasks and welcomes longer intervals of rest. The only mental faculty obviously involved in this condition is the memory, especially of recent incidents, even while old ones are well retained. The forgetfulness of young people comes from carelessness and a predominant interest in other thoughts. With the aged the new impression, however vivid at first, fades away from a lack of power in the brain to retain it. It must be quickly and frequently repeated, before it will endure. So far the change may be considered as the normal result of old age, and destitute of any legal consequences. Occasionally, indeed, in the closing years, the mind displays even more than its wonted vigor and brilliancy. It was these exceptional instances that led the poet Waller to say:

> "The soul's dark cottage, battered and decayed,
> Lets in new light through chinks which time has made."

Sometimes the change here described proceeds still farther, and induces a condition that is abnormal, ending in *senile dementia*. The memory becomes less and less tenacious; the perceptions less exact and clear, one person or thing being mistaken for another, and their relations misunderstood. Then the judgment—that is, the power of discerning the relations of cause and effect, of distinguishing between the specious and true, of taking in the remoter considerations germane to the case in hand, of weighing and rightly appreciating conflicting claims—loses its vigor, and

is easily led astray by false lights. And so the process of decay goes on, until it reaches it utmost limit in virtual extinction of the mental powers. Now what we would like to know is, the precise point at which testamentary capacity ends; and this, of course, is beyond our reach. As to the effect of this condition, both in its earliest and its latest stage, there can be no diversity of opinion. It is during the intermediate stage that it gives rise to obscurity, doubt, conflicting evidence and abundant litigation.

To arrive at a correct decision, we must first understand what are the intellectual powers necessary to testamentary capacity. In the first place, the memory must be active enough to bring up to mind all those who have natural claims on the bounty of the testator; to make him aware of the nature of his property, its location, the incumbrances upon it and his debts. If he makes bequests in certain sums of money, he should know with some degree of exactness the value of his property; and if he has made previous wills, he should be aware of their contents. Whether he actually had such a memory will generally be determined, for the most part, by the circumstances of the transaction. In most cases evidence is given respecting the general condition of the memory as manifested in the ordinary discourse, and this, coming as it does, in a loose, detached, fragmentary manner, from persons usually unaccustomed to observe mental phenomena closely, requires to be carefully and intelligently examined. The lapses of memory exhibited by all old people must be distinguished from that utter loss of memory that no effort can retrieve, even for a moment. The former is chiefly in regard to recent things, which are readily brought back to mind and are retained for a while. The latter embraces old as well as recent incidents, impressions customary as well as casual, ideas the most as well as the least familiar. The old man who is constantly mislaying his spectacles, forgetting the face of the person to whom he was introduced the day before, and marching up the broad aisle of the church with an umbrella over his head, may be found, when his attention is specially directed to a subject, to remember its prominent points,

understand them well, and govern himself accordingly.

Let it be observed, in this connection, that many of those old people so forgetful of passing events and so careless of little proprieties, need only to have their attention fixed on the matter in hand to display no lack of memory or understanding. If, on the other hand, a person has utterly forgotten the events of his earlier age; if he cannot tell his own age, or the year of our national independence, is unable to tell how many six and six make, and has forgotten whether his estate is in lands or houses or stocks, he surely has lost his testamentary capacity.

The mental infirmity most often the source of testamentary incapacity, is impaired judgment. To make an equitable distribution of his estate among those connected with him by blood or affection—such a one, I mean, as he would have made while confessedly sound—implies on the part of the testator a variety of considerations that cannot safely be overlooked. He should be able to appreciate properly the nature of their claims, their present and prospective necessities and the favors they have already received; and all this, not to mention other considerations, requires a nice discrimination, and the power of looking before and after. If the bequests indicate any deficiency in these respects, it certainly furnishes ground of suspicion.

There is a large class, you observe, still unprovided for in the schedule of Coke. I refer to that of persons neither idiots, lunatics, nor the victims of sickness, grief or old age —persons having by nature a deficient mental endowment, and embraced under the general appellation of imbeciles. The wills of such persons often come into dispute, and though their disposal is determined by the same principles as those last referred to, yet they give rise to a larger range of speculation and doubt. In the one case, the question on which the result may depend is, How much mental power has been lost? while in the other the question is, How much was ever possessed? The difficulty of the question is increased by the fact that in many, if not most imbeciles, there is much inequality in the strength and development of the several mental faculties. The same person may be shrewd, even

sharp, in some transactions, dull and foolish in others; at one moment uttering a pithy remark, at another leaving no doubt of his native simplicity. With shrewdness and folly thus displayed side by side, it is not strange that different observers are sometimes very differently impressed by what they witness. One who has sold him a gun or a fishing-rod, or made for him some little article of use or ornament, and listened to his comments, is ready to pronounce him about as sensible as the generality of men. Another who has witnessed his conduct in affairs requiring some prudence and judgment, is strongly impressed with the depth and breadth of his simplicity. And this is a specimen of the evidence heard in our courts, when they are called to adjudicate in cases involving the persons or property of simple-minded people. It is also a lamentable fact, that the disposition to form positive conclusions on the strength of a partial one-sided observation, is about as common among men of some culture as it is among those who are without pretensions to any. Until mental manifestations are better understood, we shall continue to witness these strangely conflicting conclusions in ligitation involving the interests of imbecile persons.

To meet this state of things, the first thought was to fix upon some arbitrary, specific standard of mental power, by which the mind of imbeciles should be measured. I know of only one that has survived the test of experience, and even that is seldom offered now. It has been said with some show of authority, that to make a valid will one must have capacity sufficient to make a contract. Had these conditions been reversed, and the proposition been, that as much mind was required to make a contract as to make a will, it would have had as much support in the nature of things as the other, and that is none at all. Until we are satisfied as to the exact amount of mind necessary to make a contract, this measure will scarcely help us, even with the estimate I once heard given from the bench, that it is as much as is required in the ordinary business of life; which must remind us of that venerable measure of size with which we are all familiar, "As big as a piece of chalk." The only rule founded

in reason and justice is, sufficient mind for the occasion. I hardly need to suggest, that to distribute a large estate equitably and judiciously among a considerable number of persons and institutions, must require a stronger and wider exercise of mind than would be needed for the disposal of a small estate among the few legally entitled to a share of it. And as much may be said of a contract involving many contingencies, as compared with one disposing of a few acres of land.

Thus far, it will be seen, the elements of testimentary capacity are strictly intellectual, pertaining to the pure reason. A testament, however, is not always the product exclusively of the understanding. The moral part of our nature—the sentiments, affections and emotions—may be as potent an agency in its production as the intellectual. Hopes and fears, attachments new and old, a sense of dependence, a chronic habit of submission and deference, assiduous attentions, crafty insinuations—these may greatly prevail over the most obvious claims created by the law of inheritance. Inducements of this character are not excluded by the law. All that the law requires in feeble-minded people is, that they be not excessive, calculated to drive the mind from well-chosen, well-matured arrangements, and divert the course of property into channels it would not otherwise have taken.

In examining these cases, we must never forget that both the intellectual and the moral faculties may have been concerned in their production, because, if either of these factors are left out of the account, we are greatly in danger of being misled. Nor must we forget, while investigating their respective agency, that they may act with some degree of independence of each other. The same person who thinks correctly and sensibly so far as he goes, may readily yield to inducements strongly presented to his feelings. In a case lately tried in Massachusetts, this distinction was so sharply and so pertinently made, that it may claim a moment's attention. A man, never married, confessedly feeble-minded, and under guardianship, concluded to make his will, which he did without urging or hindrance from any quarter. In this he bequeathed his property—$200,000—to various charitable insti-

tutions, and to a few intimate friends from whom he had received much care and kindness, completely ignoring his sisters, for the reason, as it appeared in evidence, that they took no notice of him and were wealthy enough already. In making the will he was aided by a lawyer of the highest moral standing, and the whole transaction was free from suspicious circumstances. Two or three years afterwards, while in company with certain persons whose relations to him gave them much influence over him, he became so much excited by their reproaches and solicitations, that he called for the will and drew his pen through his signature. The will was offered for probate; but the judge declined to approve it, and an appeal was made to the Supreme Judicial Court, in which a trial ended in the establishment of the will. The jury virtually said the will was a rational act, rationally and calmly done, with memory and judgment sufficient for the purpose; but the revocation was done in a moment of passion, excited by the suggestions of others, and too strong for his feeble mind to resist. The verdict of the jury was approved by the court.

The question of testamentary capacity in feeble-minded people is generally connected with that of outside influence. Sound-minded people may and often do ask advice in the final disposition of their property, and the result is, very likely all the better for it. Such advice may be needed all the more where the mind is weakened by nature or disease; but when obtained, it is always, and very justly, viewed by the law with suspicion, and the dominant question is, whether or not the testator has been subjected to what is called *undue influence*—because, sound or unsound, strong or weak, his will must be his own will, and not other's. If the influence is such, that the wishes and the interests of other parties, rather than the testator's, are represented, then the law supposes that the will is really not his will. In order to establish the fact of undue influence, however, a foundation must be laid by first proving the fact of mental deficiency. The attempt is sometimes made by lawyers, aided by physicians, to reverse the process. Unless the testator has clearly manifested some mental unsoundness by his previous acts, the proof of

undue influence should be strong enough to be unmistakable. It often happens that no such can be shown; that up to the moment of the making of the will, no indications of feebleness, of delusion or wandering have been witnessed. I do not say that even under such circumstances undue influence may not be exerted. When we consider the enfeebling effect on body and mind of a long last illness, of the many infirmities that often attend this period, and of the utter prostration of the will produced by pain and a sense of complete dependence, we can scarcely conceive of conditions better fitted for the exercise of an undue influence over testamentary dispositions. The courts of our time have become quite familiar with a certain class of cases presenting these traits. An old man marries a young woman, and within a year or two dies, leaving a will greatly in her favor, much to the disappointment of relatives who would otherwise have received the whole of the estate. These cases are exceedingly embarrassing, for we are often left without any clew to guide us to a rightful conclusion. We are sure it is such a will as the testator would not have made in the vigor and flush of health; while we hesitate to say, under the conviction that a man has a right to do what he pleases with his own, how far a sense of gratitude for kindness and service may be allowed to shape his decision. Fortunately, perhaps, it frequently happens that some circumstance sheds a little light upon the case, enabling the jury, if not to decide according to its legal merits, yet to do what, in their rude estimate, "is about right."

You observed, no doubt, that Coke, in his classification of mental disorders, ignores entirely a form of the disease which is far from being very rare. The reason was, probably, that it seemed so partial in its operation—it left so much of the mind free, apparently, from its influence—that it was not supposed to impair the person's responsibility for civil or criminal acts. Nearly a hundred years went by before it was first formally recognized by Lord Hale, as well as another hundred years after him before the law began to take it into the account as an element of excuse for human delinquency, or regard it as a claim on its protection. I refer to what is

now called partial insanity, in which a person, while entertaining some notions having no possible existence, in all other respects talks and acts like other men. How to meet the difficulties suggested by this form of mental disease, was a problem entirely beyond the reach of this luminary of the English law; and he passed it along to his successors, many of whom, even to this day, have been as unwilling as he to give it any practical effect in the administration of justice. The light shed upon the nature of disease, and especially of insanity, by our better methods and opportunities of study, has not been utterly disregarded; and though we are too often obliged to witness the display of the old ignorance, rather than the new knowledge, yet the time is coming, it is to be hoped, when the law will be in entire accordance with science.

It is somewhat curious, that up to the present century we hear nothing of partial insanity, strictly so called, in civil cases; and in criminal cases, where it was sometimes offered in defense, it scarcely received a respectful hearing. The common idea that the monomaniac had still reason enough left for all practical purposes, protected his testamentary privileges; and generally, it may be supposed, the rule worked no injustice. Had the courts been brought face to face with a will the manifest offspring of a gross delusion, they might have refused to sustain it. It is hardly conceivable that they would have approved a will devising a large estate to the building of a railway to the moon (though hardly more a folly than many exclusively mundane that have been built), however prudent, sagacious and intelligent the testator may have been in the ordinary affairs of life. It was not until 1828 that this question of the legal effect of partial insanity on the testamentary capacity was squarely met and rightly decided. I refer, of course, to the case of *Dew* v. *Clarke*, which came up for final adjudication in one of the English Ecclesiastical Courts, Sir John Nicholl presiding. The matter in issue was the validity of the will of a London surgon, who bequeathed the bulk of his estate to his nephew, leaving only a life interest in a small portion of it to a daughter, his only child. The testator had, for

many years, very creditably practiced his profession; and though regarded by his patients and many others as eccentric and irritable, was never suspected by them of laboring under any kind of mental derangement. On the other hand, it appeared that he had always entertained the strongest aversion towards this daughter, describing her to his friends and strangers as prone to all manner of vice—as a perfect fiend, an imp of Satan—charging her even with impossible crimes. His treatment of her was almost incredibly savage, not only compelling her to perform the most menial offices, but he would often strike her with his clenched fists, cut her flesh with a horse-whip, and once, when she was only ten or eleven years old, he stripped her naked, tied her to a bed-post, and after flogging her with a large rod intertwisted with brass wire, rubbed her back with brine. It appeared that there was no cause for this extraordinary antipathy. The girl was described by all who knew her as amiable and docile in her disposition, and perfectly correct in her deportment. Against this will the judge pronounced an exhaustive and most elaborate judgment, untrammelled as he was by the precedents of the common law, and inspired by the larger spirit and freedom of the civil law. Remarkably well informed on the nature of insanity, he discussed its effect on the mind of the testator with a sagacity never before witnessed in a court of law, reaching to the conclusion that the mental disorder was fatal to the validity of the will. Against the doctrine there announced, novel and unprecedented as it was, no voice of dissent has ever been raised. It is one of the few things in the medical jurisprudence of insauity which may be considered as established.

Sir John Nicholl, be it observed, was careful to restrict the operation of the principle to the case before him. The mental disorder was sufficient to vitiate, not any will, but the will in question. Had the testator bequeated his property to his daughter, he would, probably, have established the will, insane as he was. The insanity would have been no bar to a natural and proper distribution of his estate; and so, I apprehend, the matter is now generally regarded.

The objection arises only when the distribution is not deemed to be natural and proper by various relations, who find it for their interests to destroy the will. The principle being settled that insanity does not necessarily impair a man's capacity to make a will, any more than it destroys his power to do many other things as well as ever, its effect ought not to be determined by any arbitrary rule, but rather by that judicious consideration of the various circumstances of the case which is founded on correct views of the nature of insanity and the ordinary motives of human conduct. In accordance with these views, a case was adjudicated in the Court of Queen's Bench, in 1870, *Banks* v. *Goodfellow*, L. R. v. Q. 549, Chief Justice Cockburn delivering the opinion of the court. Here a will was established, notwithstanding the testator was proved to have entertained some gross delusions, for it was obvious that these delusions could not possibly have influenced the dispositions of the will. These two cases, I presume, have settled the rule of law in regard to the effect of delusions on testamentary competence, and thus, happily, brought the law of the land into harmony with the laws, physiological and pathological, of the mental constitution. And let me say in this connection, that the effect of mental impairments on the testamentary power is not to be estimated solely by their demonstrative symptoms, for it may be greatest when scarcely seen by the world at large. I have never met with worse wills than some made under such circumstances. I have known a will made shortly after an apparently slight attack of paralysis, pre-eminently absurd, irrelevant to any worthy purpose, and almost if not quite impracticable of execution. And yet the testator seemed to have completely recovered, and continued his ordinary pursuits till prostrated by a second attack.

Wise and proper as the doctrine may be, generally stated, that a delusion should vitiate any testamentary disposition made under its influence, cases can easily be imagined where it would be exceedingly embarrassing to determine the exact range of its application. We readily admit that the will of a man disinheriting all his heirs-at-law—brothers, sisters, nephews and nieces—in the belief that they have been at-

tempting to take his life, should not stand. But supposing this delusion referred only to a single relative, the rest of them being properly remembered, I think we should hesitate to break the will for that reason alone.

In pursuing the progress of thought on this subject, we meet at last one of those extravagences of opinion, which, coming from men of commanding intellect, produce surprise, if not admiration. Lord Brougham declared on one occasion, that partial insanity, however limited apparently, as well as the more general forms of the disease, should vitiate all the patient's civil acts. He regards the mind as a single, indivisible potency, and consequently that any impairment of it must be absolute, not partial. On this theory, of course, there is no place for the practice of dividing and subdividing the mind, some portions becoming unsound, while others remain sound. Lord Brougham's doctrine is not without warrant, certainly, in the prevalent metaphysical theories of the last century, and, accepting them, it would be easier to reject it with feelings of wonder and surprise, than to refute it. If inconsistency would furnish a conclusive argument against it, it may be found in the statement he once made, that a man might be so unsound as to be regarded by his Maker as irresponsible for criminal acts, while he might be justly held responsible by his fellowmen.

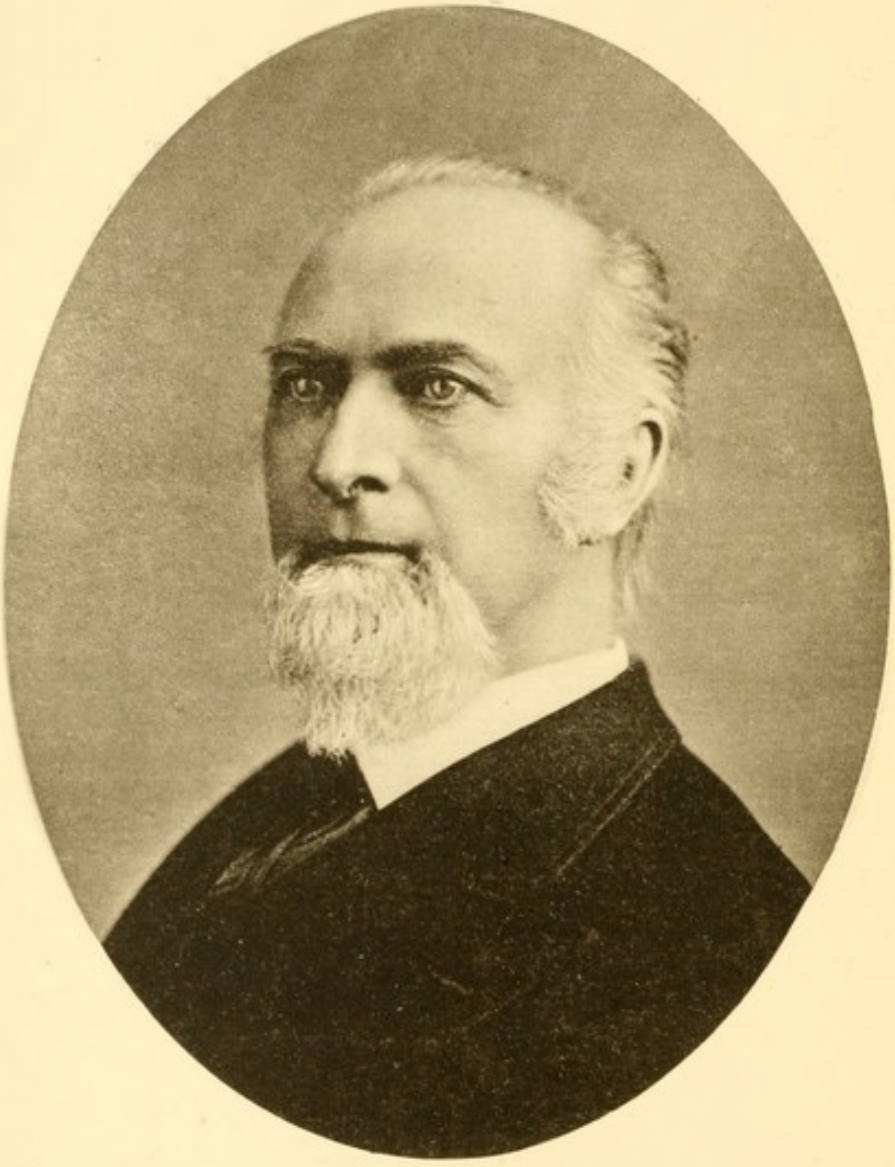
And here we see the injustice that might be committed by making insanity, abstractly speaking, incompatible with testamentary capacity; for we say that a man who disinherits his heirs-at-law under the delusion that they have attempted to poison him is thereby *non compos*, how shall we answer the question whether his will should be approved, even if he had bequeathed his property to those heirs-at-law, notwithstanding his delusions?

The effect on testamentary capacity of extraordinary beliefs, fanciful projects, or bequests for impracticable purposes, is frequently not very easily determined. Such things are suggestive of insanity, and the event has sometimes been made to turn on nice distinctions between insanity and eccentricity. In these cases the proper line of inquiry must

depend on the circumstances of each particular case, and the decision should be governed more by the dictates of common sense, than any arbitrary rules of law. In some cases there can be little difficulty in arriving at a satisfactory conclusion. If a man noted for some oddities of thinking and acting, but otherwise correct and shrewd, believes that Brandreth's pills are a certain cure for all diseases whatever, and that everybody who would take enough of them would live to a good old age, this notion would hardly vitiate a will making unexpected and unjust bequests having no connection with and traceable in no way to it. If, on the contrary, he had devoted a considerable portion of his estate to the maintenance of a fund for supplying the poor with Brandreth's pills, this, certainly, would be good reason for breaking the will. Take another case. In Massachusetts, lately, an elderly gentleman in failing health, and with divers nervous ailments, was induced to try the movement cure, and came at last to conceive the most exaggerated notions of its medical efficacy, though it never helped him much. Indeed some of these notions almost, if not quite, amounted to delusion. In this state of mind he made his will, by which he appropriated a great part of his estate to the establishment of an asylum for nervous invalids to be treated by the movement method. I have no hesitation in saying that that will was the offspring of a morbid nervous condition, if not of delusion, and therefore not to be established. Whether certain mental manifestations are indicative of insanity or only eccentricity, is a point not always easily settled; and no splitting of hairs on the question will prove so satisfactory as the exercise of a little common sense. In many of these cases where, apparently, the mental twist is very limited and of doubtful character, a close scrutiny of the conduct and conversation will show here and there traces of a more extensive influence, thus shedding additional light on the matter in hand.

In presenting the subject of testamentary capacity in the way I have, it was for the purpose of giving to the pathological element the prominence it rightfully deserves, and which consequently ought to secure it a controlling influence in disputed cases. And let me say, in conclusion, that the

administration of justice in this particular must often be imperfect, until the light of medical science is freely admitted and used,—not the light that has traveled down to us from the times of Coke and Hale, but that which we owe to the progress of knowledge during the present century—greater, far greater, indeed, than that of all centuries together.



Yours truly
W. A. Beach

William A. Beach.

William A. Beach was born at Saratoga Springs on the 13th day of December, 1809, and died in the city of New York June 28th, 1884. He received an excellent academical, but not a college education, and studied law in his native village with the famous *Nisi Prius* judge, the Hon. Esek Cowan. He was admitted to practice in 1832. Mr. Beach was, in the truest sense of the term, a great lawyer. At the time he commenced practice the bar of Saratoga was, in proportion to its members, the most brilliant in the State, and the attendance at its circuit court embraced the most eminent lawyers from the counties of Albany, Columbia, Rensselaer and Schenectady. At Saratoga Springs lived Reuben H. Walworth, Chancellor of the State ; Esek Cowen, whom we have just named ; John Williard, the learned Vice-Chancellor and Judge of the fourth judicial district ; Nicholas Hill, Jr., one of the ablest lawyers our State has ever produced ; Judge Hay, Anson Brown, Judiah Ellsworth, Judge Bates—all keen, able, noteworthy men in their profession ; while on attendance at the circuit were Marcus T. Reynolds, Sam. Stevens, Daniel Cady, John P. Cushman, Ambrose L. Jordan and other eminent lawyers from the contiguous counties.

It was in such company and with such surroundings that William A. Beach drew his first legal inspirations ; and it was with these men, when admitted to the bar and commencing the trial of causes, he found himself confronted. He was much the junior of even the youngest named, but he started into professional life with a determination to try his own cases, no matter who was his opponent. The youngest lawyers and students attending the circuits, used to regard with the most intense admiration the contests of the young Beach with the sharp, hard-headed and quick-witted advo-

cates just mentioned. For they were proud of the work of a young man in whose footsteps they hoped themselves to follow. Mr. Beach some time after removed to Troy, and soon was retained in all the important cases of that section. About thirteen years before his death he came to this city, where his fame had preceded him. The great causes he was engaged in are matters of legal history, and need not be referred to here. As an advocate, embracing all the best qualities which should adorn his profession, I am not prepared to say I ever knew his superior. He indignantly rejected all trick, craft and chicanery in the trial of a cause. As an adviser he was conscientious and considerate. As an advocate, who can forget his dignified demeanor, his unvaried courtesy, his marvelous process with a dishonest witness, his eloquence, his marked respect for the Court, coupled with an independence of judicial action which often frightened the younger lawyers who had retained him? With what a look of incipient rebuke he would regard a judge who had made a ruling he believed to be erroneous, a look coupled with an expression as if he must have misunderstood what had just been announced! He was one of the most successsful lawyers of the land, and at the same time was one of the most honest. The Court, when he stated a matter of fact as within his own knowledge, accepted it unconditionally. William A. Beach came fully up to the true idea of what a great lawyer should be. He was honest, he was conscientious, he was eloquent, he was profoundly learned in the law, he was devoted to his profession, he was kind of heart and merciful in his nature. R. B. K.

MORAL RESPONSIBILITY.

By MORRIS ELLINGER, Esq. *

Medico-legal science has not lagged behind kindred sciences in its progress; it has passed the narrow field to which its operations were originally confined; its application is no longer restricted to the mere investigation of cases where the Judge required the professional help of the medical expert to determine the existence of crime We are entering a period in the history of civilization when society takes up the question how to prevent crime—how to improve the moral and physical condition of the people, by which it is hoped to eradicate crime more thoroughly than by the punishment of those who violate the law. The transgressor himself is no longer looked upon as an outcast; one who has forfeited all his rights. He is rather the object of pity and commiseration as the unfortunate victim of circumstances, whose condition is sought to be improved. This, at least, is the spirit which more or less guides the modern system of treating crime and criminals. This change of system is one of the greatest reforms which some of our foremost minds and best friends of the human race labor for. To lift up humanity higher and higher is the great object pursued; it is a work of slow and gradual progress; it requires the help of all in whose heart dwells the impulse of contributing their mite towards perfecting the great temple of humanity. It requires to arouse society to a higher conception of their duties towards each other, to the responsibility which society was to the individual, and the individual to society. If he is

* Read before the Medico-Legal Society, April 22d, 1875.

a benefactor of the human race, who makes a blade of grass grow where none grew before, the greater benefactor is he who helps to redeem a human being from degradation, and furnishes him the opportunity to resume his usefulness as a link in the chain of the human family. There is no society of men who can wield a greater influence in bringing about such a reform as the society which I address. In it are united the elements possessing the knowledge requisite to probe to the bottom the old system pursued in the treatment of criminals, to lay bare its abuses and faults, and find the proper remedies by which the way may be paved for a new departure. You have in your midst the naturalist, psychologist, the sanitarian, the philosopher, whose observations and studies enable them to determine how far those that come within the reach of the law may be held fully accountable for their acts, as free agents, as men whose volition is absolutely within their control, and therefore have to be dealt with by society accordingly. On the other hand they may determine how far others are victims of an unfortunate, malformed physical organization, subjects of abnormal desires, and appetites of morbid impulses, so powerful as to be beyond control. You have again men in your society who are not only conversant with the machinery provided by law for the protection of society against the infringement of its rights and privileges, but who can devise such legislation, by which the number of those who live on the outskirts of society, as its perennial enemies, may be brought within the genial moral influence of regulated social life.

The student of human nature, of the laws which govern the growth and development of our present state of culture, jointly laboring with the interpreter of the laws in force for the punishment and suppression of crime, constitute the elements best adapted to effect such practical reforms; they are best fitted to remedy the code existing in order to improve the general condition of society. The time allotted to me this evening will permit me to allude but briefly to such features of the present system, which require the immediate attention of the friends of the unfortunate. Two glaring instances have been furnished of late in the history of criminal

jurisprudence, which seem to prove conclusively that men are not always free agents of their actions, but are the slaves of a moral or immoral bent of character, implanted into their nature from birth, victims of a criminal propensity inherited from their parents. I allude in the first instance, to the boy lately convicted in Boston for murder committed in the most wanton and almost fiendish manner, apparently without any other motive than that of satisfying an inborn lust for destroying human life. This boy is as much a phenomenon as those children who display in early childhood wonderful proficiency in arts and other accomplishments, which as a rule are the result of patient enduring labor. The one has received as his birthright the divine grace of art and mental development, the other the curse of moral deformity. The one propensity as well as the other is founded in their respective physical organization; both are innocent of the gifts that are, as it were, forced upon them by a prodigal nature. The boy murderer has not become what he is by education, by association, by impressions upon his mind, received from without; he is impelled to his deed by "inspiration," if the word can be applied in this sense. What is to be done with that boy is the question pending before the supreme authority of Massachusetts. The boy is certainly not responsible for the deeds committed, certainly not morally responsible. In this case it becomes merely a question of self-protection on the part of society, and it would seem as if the most judicious decision would be to let the law take its course and extinguish a life which can never be a benefit to the individual himself, but a standing menace and threat to society. Society has not only the right, but it is its duty to protect the common welfare, and in the performance of its duties such a life as that cannot have any weight in the scale of justice.

But the case of this boy is one of many; not that the criminal propensity is always of such a revolting character; happily the hyenas in human form do not occur in alarming numbers; but many crimes are committed, impelled by inborn impulses, and could the Judges see into that mysterious chamber, the brain, they would acquit many a poor victim who stands trembling before the tribunal of justice, as being

innocent of any guilty intent. But with our still imperfect knowledge of the motive power of human action, society has to deal with the facts as they present themselves, yet patient observation and careful examination of the history of individuals would enable us to bring greater discrimination to bear in the adjudgment of criminals, and in their treatment.

The hereditary transmission of criminal propensities has received a remarkable illustration in the statement made by Dr. Harris, based upon a careful ascertainment of facts of the propagation of a large criminal population from one mother abandoned by society to pursue a life of dissipation and prostitution. As shown by Dr. Harris, mostly all the descendants of that woman had to be dealt with by the judicial authorities, and not few of them spent their lives in penal establishments. Of course, self-protection demanded that these children of crime should be dealt with according to their deeds; but would it not seem that the actual responsibility for these social excrescenses rested upon society itself.

Does not the history of that unfortunate girl, as revealed by Dr. Harris, remind one of the Scriptural verse: "Visiting the iniquity of the fathers upon the children and upon the children's children unto the third and fourth generations?"

If the sins committed by parents revenge themselves, and they do revenge themselves, upon the future, yet unborn generations, society has no moral right to inflict penal measures upon a generation, in the growth of which it bore some share of the responsibility. And it is not in the past alone that society tolerated and almost became particeps criminis in the growth and education of a criminal population, nor are the examples confined, to thinly populated districts, to the country sparcely settled.

The process of breeding, rearing, and educating criminals is carried on to a much larger extent in our great cities, under our very eyes. There are whole districts in our city settled by a lawless population. The police authorities have probably the history of every one of those individuals, who live in constant conflict with society. They are not only permitted to forge and perfect plans for the execution of their

criminal intents, but they are suffered, without let or hindrance to propagate and educate a criminal population. I believe I am justified in stating that the majority of the convicts populating our penal establishments, sent there for grave felonious crimes, come from these pest-holes of moral depravity.

Nor is that population of which I speak of without leaders and open champions. Men who claim to exercise a decided influence in public affairs, and who are understood to wield it in the interest of that lawless community, which gives them their strength. I remember, at one of the recent presidential elections, a high official of the Federal Government pointed out to me a noted criminal, one known for his desperate proclivities and the unscrupulous use which he made of the knife and the pistol, who was then waiting for an audience, to which he had been invited. As I subsequently learned, he figured at that election as one of the chief leaders who marshaled the Federal supervisers of election.

Of course the opposing faction had plenty of heroes to oppose to this captain of Federal officers, who were to supervise the sovereign people in their exercise of the supreme right of suffrage. Cut-throat met cut-throat under the authority, with the sanction and by appointment of the executive officers of the State and Federal Government. Whether any improvement in this condition of things has been effected I must leave you to judge, and merely refer to a public trial for homicide which took place after our recent election, in which one gentleman holding office under our municipal government and another who formerly held one of the chief public offices of trust and honor, figured as the principal personages.

There is probably no community in the world in which the lawless class wields such a powerful influence as in this city. Legal and municipal authorities fear them, because the Warwicks who in the political caucus make and unmake the rulers of the people, are their friends and protectors. Hence we see the places where the most noted desperadoes congregate left severely alone, the houses which are known

as so many spider-webs, in which the unweary are caught, despoiled, robbed, and often murdered, tolerated and acquiesced in. Police captains, who ought to be conversant with every nook and corner of their precincts where crime is hatched and the public health endangered by the basest prostitution, pretend guileless ignorance, and even defy their superiors to extract from them more information than they desire to give.

What hopes have we, then, of reforming criminals if we leave untouched the nursery which breeds the criminals? And worst of all, criminals bred in that nursery, educated to the profession, as it were, cannot be reformed. Their sense of moral conception has been so warped, yea, obliterated, that all hope must be relinquished of kindling in their breasts the divine spark of humanity. Can you expect of achieving a better success in the future if you leave thousands of children to grow up in that poisoned atmosphere, pollution and dissipation practiced daily before their eyes, every spark of innate moral conception crushed out, initiated with the first dawn of intellect into the practices of crime and prostitution? The germ of unlawful desires inoculated into their blood by brutalized parents, bred and educated—if we may apply the word education in this sense—in the atmosphere in which they live, what right have you to expect any other fruit than one of the foulest corruption?

Can you in justice hold one begotten in iniquity and bred in sin responsible if he follows the bent of his nature, deprived as he is of every moral support to lean on? And do not forget, in the same geometrical proportion in which the progeny of that unfortunate mother on the Hudson river counties, neglected and cast out of society, increased, does the criminal population increase, which you allow to grow up without interference under your own eyes.

And do we seek to improve the moral condition of those whose misdeeds give you a right to deprive them of liberty? Are penal establishments of such a character, are they so governed and regulated that we may entertain hopes of their exercising a reformatory influence upon the inmates? Convicts of various degrees of criminality are thrown

together, without discrimination, with no regard whatever to their former social condition, their age or condition. The hardened criminal, he who is but released to come back again after a very short time, if the authorities are fortunate enough to obtain a hold of him after the repetiton of a crime, is placed together with the novice, who for the first time is made aware of the fearful responsibility entailed by a life of criminality. Whatever remnant of self-respect might still be latent in the breast of the young criminal, is wiped out by being brought in contact with those who have forgotten long ago what shame means. Manliness and self-respect is crushed out of him with the irresistible force of contagion. The accidental transgressor of human or Divine law, who may have yielded to temptation or seduction, but who with proper treatment might be redeemed from a life-long career of degradation, is transformed into a conscious, self-willed criminal, his mind is corrupted and poisoned. Instead of reforming him, according to the intention of the law, we create a dangerous enemy of society. There are no inducements held out in our prison system which would act as stimulus to the latent moral sentiment; not redemption is achieved but degradation. Nor is the manner in which the convicts are employed in our penitentaries such as would teach the sweets of labor and usefulness of a life of industry, to those who have been brought into their present condition by the fear of labor. The employment given to our convicts in the penitentiary is more of a character to fill out the time of the convict in a degrading and self-debasing way, than of inuring them to a regulated life of useful industry, and to this labor all are held alike. Will the convict have learned to procure the means of life by the honest pursuit of industry when he leaves the so-called reformatory institution? Cast out by society, shunned by honest people, with the mark of Cain upon his brow, he enters life again, and knows as little as he did before to procure the necessary subsistence for himself and his family, which in many cases are waiting for his support. Is it altogether his fault—it is his fault solely—if he leaves the institution to become only

more reckless than he was before? And does society share no responsibility in the life of that man? Why do we not reform a system which experience has shown to be deficient?

Our system of criminal jurisprudence in the treatment of mild offenses is no less at fault. Let me call attention but to one class of offenders who come within the jurisdiction of the law officers. I refer to those who are consigned to prison for intoxication. This offense against the public peace can be of but twofold character. It is either the result of a casual, accidental debauch, into which the unfortunate victim has been inveighled by indiscreet associates, or it is one of habit, and deemed by some incurable. If the offense is one of accidental excess, the authorities should deal with it only so far as detain the offender until the effect of intoxication has passed. If, on the other hand, the passion for drink has grown into a malady, it should be dealt with in the same way as those are dealt with from mental disease. If the family of the offender is unable or unwilling to assume the responsibility of confining the individual until a cure is effected, the community should take charge of him and confine him until he or she is capable of self-control. If we pursue the statistics of crime, we will find the appalling fact that of the large number of persons sent to the workhouse for intoxication, more than half are women; of those the larger part are mothers, and the largest part of those are sent again and again to the correctionary institutions for the same offense. Some of them have returned to the workhouse again and again. Think of it! What responsibility society incurs in allowing these abandoned creatures to return to their old haunts unreformed, inflicted with the same disease, and not unlikely to become mothers of a criminal population like the one alluded to before. The habitual drunkard—especially if he is of vicious inclination—is a constant danger to society. It is but two well known that a large portion of the crime committed in this country is done by persons under the influence of alcoholic poison. Would it not be well, therefore, to construct better safeguards against the depredations of habitual brutal intoxication, and thus prevent the commission of crime rather than punish it

after the injuries, which in most cases are irreparable, have been inflicted?

The treatment of youthful offenders is not more judicious than that of older sinners.

A visit to the City Prison will convince the most casual observer that the incarceration, or even detention of boys under the same roof with persons charged with heinous crimes is not the best way to instill self-respect into the breasts of children, and if anything will poison their minds where only youthful extravagence had been the cause of a slight offense.

I repeat again that my object this evening was but to call the attention of this society to the unsatisfactory condition of our public system of treating crime and criminals. I hold that this society if it can not take the initia ive in the reform measures, because other societies like the Prison Reform Association has for years labored in this field, with commendable zeal and not indifferent success, it can take an active and prominent share in these labors. In my humble opinion the objects of this society are not attained by merely listening to able disquisitions but taking actively in hand some of the work which must needs be done and which would most appropriately come within its sphere to do. I remember that a paper on poison read by one of your prominent members, concluded with the suggestion of having a committee appointed with the view of effecting a reform, deemed necessary and beneficial, and if I am not mistaken our lawgivers recognized the reasonableness of the charge and complied with the demand. Might it not be well to have a committee appointed out of your body, consisting in part of gentlemen of the medical profession, in part of the legal profession, to take in consideration the condition of our system of public corrections?

On motion of Dr. Wells a committee of five was appointed, consisting of Mr. Ellinger, Dr. W. A. Hammond, Mr. Jacob F. Miller, Dr. R. L. Parsons and Mr. Simon Sterne, to examine into the system of public correction as suggested by the author of the paper.

The paper was discussed by Mr. J. F. Miller, Dr. A. N. Bell, Mr. Clark Bell, and others.

The Sanitary Interests of the Public Schools of New York.

FINAL REPORT OF SPECIAL COMMITTEE ON LEGISLATION.*

At the stated meeting, held June, 1877, it was announced that the Committee on School Hygiene would present to the Society, as soon as practicable after the vacation, a synopsis of its labors since its appointment.

It might be well to refer here to an incident, trivial in itself, yet of interest, since it was the beginning of the effort of this Society to ameliorate the condition of school children, and thereby promote the interests and health of the entire community.

At the meeting in February, 1876, Mr. George H. Yeaman read a paper entitled "State Medical Polity," which was followed by discussion, during which a member conversant with sanitary affairs in relation to schools made some remarks, which were published in full in the *New York Sun* of February 27th, 1877.

That enterprising journal sent a representative to the Board of Education, to investigate the subject, which elicited the following information :

When the attention of President Wood, of the Board of Education, was called to the report printed in the *Sun* of Sunday, in which was set forth the dangers to which school children are exposed through the insufficient ventilation and capacity of the school buildings, he said that what was therein stated was correct. "We are raising children to kill them. As long as the law permits children of four

* Made to the New York Medico-Legal Society, October 3d, 1877.

years of age to attend school, the primary schools will remain overcrowded, and will continue to be merely nurseries, as they are to-day."

At the meeting of this Society in March, the following Committee was appointed: George H Yeaman, A. N. Bell, M. D., R. J. O'Sullivan, M. D., R. S. Guernsey and D. S. Riddle. At the April meeting a report was made, in which it was stated that a communication had been sent to the President of the Board of Education, which was printed in full in the minutes of the Board, and subsequently in the transactions of the Society.

The Committee was continued, by unanimous vote of the Society, and made frequent reports of progress until the meeting in October, when the second report was read. This report was published in full in the *Herald*; and the wide circulation thus given it elicited much public interest in the topics discussed.

On January 3d, 1877, a public meeting was held, under the auspices of the Society, at which some interesting reports and papers were read and discussed, which were afterwards published in full in the proceedings of the Society.

At the subsequent meetings, reports of progress were made, which were duly acted upon.

From the reports made at a meeting of the Board of Education at the beginning of the school term, the fact was ascertained that in one ward alone over 1,200 children were refused admission to the schools for lack of accommodation. In the fourth school district last year a large number of children were refused admission for a similar reason.

Thus many thousand children were unable to receive the benefits of a free education, owing to the fact of there being no school-room for them. These facts deserve careful study by the public, especially by those who desire to secure to their offspring the advantages of public education.

Upwards of $3,500,000 were expended last year for school purposes. Among the items, according to the estimate for 1878, the following appear: Salaries of professors, teachers, etc., Normal College, $90,000; for nautical schools, $35,000;

enforcement of Compulsory Act, $20,000, and we may add $150,000 for the College of the City of New York.

These items are mentioned in order to show that these departments (which do not necessarily enter into the plan of the Common School system) involve annually a large expenditure, which might better be devoted to the more pressing needs of the system—namely, the erection of plain, substantial primary schools, with proper sanitary appliances for the protection of the pupils. Large play-grounds should, as far as practicable, be provided, and in improving present school houses, or in building new ones, they should be surrounded on all sides with adequate open space to secure light, ventilation and play-grounds. These extra expenditures would go far to supply the school-room now absolutely needed for elementary education.

In the reports on diseases of the eye in schools, read before the Society, some of the results of this system of higher education were shown, viz.: Cramming, ill-ventilation, and overstrain of the visual organs. One item will suffice to illustrate this point. The College of the City of New York, which is the head of the male departments of the common schools, as the Normal College is of the female departments, may be considered an example of the startling results of their unsanitary condition. In the New York College, 21.9 per cent. in the introductory classes were near-sighted; of Freshmen, 26.2 per cent. were near-sighted; Sophomores, 22.7 per cent.; and of Juniors examined, 50 per cent were near-sighted.

In the Normal College, examination reveals the following facts: 26.67 per cent. were near-sighted; 11.04 per cent. far-sighted; while 62.29 per cent. were in a normal condition.

An interesting fact was brought out in this examination: that, dividing all the scholars into the three great classes, American, German and Irish, there were found of the Irish 14.28 per cent. near-sighted; American, 19.35 per cent., and Germans 23.23 per cent. near-sighted; other nationalities gave 19.58 per cent. In other words, we have the Germans presenting the largest percentage of near-sight, Americans next, and Irish least of any.

The inference is plain that the results expected from these institutions are marred, and that the impaired vision of the candidates for the position of teacher, and the young men who graduate from the New York College, must necessarily tend gravely to impair their future usefulness, if it does not eventually end in loss of sight.

On a former occasion we referred to the compulsory law in these words :

"It is to the primary departments and schools that these children are compelled to go, according to the law, regardless of sanitary requirements or class-room accommodation, and failing to do so, must go to prison."

The injustice of enforcing the law, under these conditions, must be obvious to any reflecting mind ; indeed, it may be doubted if the higher courts of justice would willingly enforce a penal law at the risk of the health or the lives of those who cannot obey because room is not provided for them. As an illustration of this, there were at the beginniug of the vacation of 1876 forty of these unfortunate youths in prison.

The Medico-Legal Society, in advocating the sanitary reform of schools, rendered an important service in directing public attention to this subject.

The results already accomplished are evinced in the interest manifested by the public in their sanitary management. The Society, in entering on this branch of State Medicine, opens a wide field for its labors, which cannot fail to redound to its credit, and to the advancement of the objects of its organization. The immediate purpose of the Society, in endeavoring to promote this reform, cannot be better expressed than it has been in the concise and excellent language of the President, Dr. Hamilton, in the opening of the discussion, at the public meeting, January 3d, 1877, an abstract of which we subjoin.

He introduced the subject by remarking that a few words seemed to be necessary, by way of explanation, to those gentlemen, no members of the Society, who were present· "The subject of the sanitary condition of the schools of this city came before us as one of the matters properly included

in the term 'State Medicine.' And whilst we have, in the main, restricted our studies and debates to questions of medico-legal science, we have always held that it was within the purpose of our organization to consider any question of importance appertaining to State Medicine, of which medico-legal science is, strictly speaking, on a branch. In addition to this, we have the common right of citizens to inquire into all matters which affect the public interest.

"Our action cannot, therefore, be regarded as an officious interference with the duties of the Board of Health, or the Board of Education, or of any other of the State or municipal authorities. We claim the right to examine and to suggest modifications of the laws, or improvement in the management under the laws, in all things relating to the hygiene of our schools, whenever and wherever such modifications or reforms seems to be required.

"We have entered upon the consideration of this subject with no predetermination to find causes of complaint, but only to be assured that, while the State does its duty in securing education for all classes, it does not impair the health or destroy the lives of these precious children, upon whom the happiness of families and the prosperity of the city depends, nor that the schools should become centres of infection, from which disease may be spread throughout the land.

"I believe, gentlemen, I may be permitted to say that, thus far, our investigations into the condition of our schools in this city have in no degree humbled our pride or abated our Pharisaical pretensions. Nevertheless, we have defects—weak points in the masonry, want of cohesion in the iron, lack of strength in the trestle-work, which the architect and engineer, who crossed the bridge an hour before us, failed to see. We, the medical half of our Society, claim to be experts in matters of hygiene, and that we can see some things that others cannot. We believe we see defects, some of which are trivial, and might easily be remedied; others more serious, and apparently more difficult to remedy, at least without additional legislation. It is apparent, for example, that under the present law, rendering attendance at school obligatory, and which law most good citizens desire

to see, in one way or another, enforced, the crowd and strain upon the schools is excessive, and either the pressure must be relieved or the whole structure must give way."

In February, 1877, two bills were introduced in the Legislature; one in the Senate, by the Hon. James W. Gerard, providing for the appointment of an Assistant Superintendent of Schools for medical supervision in the city, which was modified to the appointment of an Assistant Sanitary Inspector for each school district, to be made by the Board of Health. In this form it unanimously passed the Senate.

The Hon. Elliot C. Cowdin, in the Assembly, introduced the bill fixing the minimum age of admission to the public schools at six years, and limiting the attendance to one session a day of children under eight years of age. The advantages to be derived from the last-named bill have been fully demonstrated in our second report, and also in our subsequent report at the June meeting, from which we quote a brief abstract.

"Of children under the age of six years, there are now upwards of 17,000 attending the lower grades in our public schools, who could not fail to be greatly benefited by the enactment of such a law, as will be seen for the following reasons:

"The children return to school in the afternoon, after partaking of a hearty dinner, often fatigued by play, and, during the warm months, overheated, so that the afternoon session is a tax on the vitality of both teachers and scholars, without any corresponding mental benefit.

"Those interested in the health of school children may satify themselves as to the correctness of these statements, by observing the little ones on these sweltering days, returning to school after the noon recess, exposed to the burning rays of the mid-day sun; whilst in the school, to be cooped up in crowded rooms during the entire afternoon, without any recess, in constrained positions, being crammed for the annual examination, tortured by drill exercises for exhibitions (the usual programme at the close of the school year), in order to gratify the vanity of school officers, who seem determined to run these schools regardless of the

physical well-being of the pupils and the requirement of sanitary laws."

In this connection there is one point of interest to which we called attention in our first report, April 5th, 1876:

"Not only are the children subjected to the tortures and annoyances already mentioned, of over crowded and ill-ventilated classrooms, etc., but frequently, before school is dismissed, the Janitor and his assistants begin their work of sweeping and cleaning, raising clouds of dust. As soon as this work is finished, and after the dismissal of school, the doors and windows are closed immediately, thereby preventing proper ventilation. Thus the children are compelled to re-breathe this poisoned atmosphere on their return to school the next day."

Previous, however, to the introduction of the bills already referred to, the Committee had, by appointment, an interview with the President of the Board of Education, and submittted to him a draft of the bills. After a careful examination he cordially approved of them, and assigned cogent reasons for their passage.

Subsequently we were not a little surprised to learn through the press that the Board of Education had protesteted against their passage, which protest was appropriately replied to from the Senate Chamber by Senator Gerard, who stated in a communication to the Board of Education that there was a very general interest manifested by the public in this subject. The district School Inspectors were not qualified to perform sanitary inspection; that their suggestions made in their annual reports received no attention; they were simply placed on file, and that was the last ever heard of them. He (the Senator) would rather hear their reasons than their protests.

Notwithstanding this action of the Board of Education, at their meeting in June last, a resolution was passed asking the Board of Health to inspect the schools, and report to the Board of Education.

In February, according to the Board of Education, there was no necessity for sanitary inspection of schools, and in June they invite the Health Board to make this inspection.

We have been credibly informed that some of these officials were never seen in the ground class-rooms of the primary departments in the more densely populated school districts during their term of office.

If this statement be correct, how could intelligent legislation be expected, under these circumstances, in relation to the sanitary interests of the schools?

In the year 1873, the Board of Apportionment, at the instance of Comptroller Green, made an appropriation of $5,000, which amount was to be expended in sanitary improvements; but it was subsequently withdrawn, owing to the failure of an agreement by the Committee on Warming and Ventilation of the Board of Education, in awarding a contract for the performance of the work.

Prior to this action, a conjoint inspection of all the schools under the jurisdiction of the Department of Public Instruction was made by the physician of the department, and two Inspectors of the Board of Health.

These reports were undes the consideration of the Committee on Hygiene, when the department was abolished by an Act of the Legislature, and since that time the reports have remained pigeon-holed, the present Board of Education taking no action upon them.

Thus, for four years, these schools have been deprived of sanitary inspection. The Board of Health has been censured for not making the inspection, and insisting on the sanitary improvement of the schools.

The probable explanation of this inaction is, that the Health Board deem it the duty and sphere of the School Board, and left the responsibility where it very properly belonged.

In this connection a recent issue of the *Medical Record* has the following pertinent remarks:

"The Board of Health, in compliance with a resolution from the Board of Education, has made a sanitary inspection of the school buildings of this city during the vacation. As a result, sixteen of these have been found wanting in sanitary requirements, and have been referred back to the Educational Board for action. We cannot resist the con-

viction that this will probably be the end of the matter. It is well known that the Board of Education has been adverse to sanitary inspection in every form, and has, during all the time the matter has been under discussion, defiantly maintained that it was capable of looking after its own affairs, of which it claimed this sanitary inspection was one. This is past history. What the future will be, is of course purely inferential, but we believe there is very little chance for reform. The resolution asking for sanitary inspection was ostensibly a bid for public favor and as an offset to the defeat of the Sanitary School bill, which was thought to be a reasonable measure by every one else, save those composing the Board of Education. The Health Bureau is merely asked for recommendations, and when these are made, they can be accepted merely in the light of official courtesy, and filed accordingly. Beyond this nothing can be done save by the pleasure of the Educational Board, as that body alone has the power to enforce any regulations, either for the mental or physical well-being of the children. Judging the future by the past, the outlook is discouraging. What is the use of making recommendations without the power of enforcing them?"

It is plain from these facts that but little can be expected from the action of the Board of Education with regard to the sanitary interests of the schools, and that the legislation which has emanated from this Society is the only feasible means of solving this difficult problem.

Probably in no city in the civilized world, more particularly in popular centres, has the medical profession less influence than in the city of New York; especially is this noticeable in the spheres in which their studies and experience naturally incline medical men to take an active part in matters pertaining to public health. An instance will suffice to explain our meaning. In the fall of 1875 an application was made to the then incumbent of the Mayoralty, by some of the most eminent medical men of the city, to appoint, as a member of the Board of Education, a physician whose experience in school sanitation would, in their judgment, conserve the sanitary interests of the schools.

This reasonable request was denied. The profession continues unrepresented in the Board of Education; this is an injustice. The claim of the medical profession is as good and, in some respects better, than that of some other interests and professions now represented in the Board. Lawyers, bankers and politicians are there, but no physicians; the physical wants of 100,000 children require the services of a trained sanitarian in the central Board of Education, who would aid materially in the enforcement of sanitary law, and would not fail to prove a useful member.

Mayor Schroeder, of Brooklyn, recognized this fact in appointing our colleague, Dr. Bell, as a member of the Board of Education of that city.

It is hoped that the present worthy Mayor will recognize the claim of the medical profession to a representation in the Board of Education of New York.

In conclusion, we would earnestly solicit the co-operation of our colleagues on the law side of the house, to aid in obtaining this recognition, and the legislation referred to in this report.

R. J. O'Sullivan, M.D.,
George H. Yeaman,
R. S. Guernsey,
D. S. Riddle,
A. N. Bell, M.D.

New York, October 3d, 1877.

The Medico-Legal Society.

Retiring Address by President F. H. Hamilton, M.D., LL.D.*

Gentlemen: Permit me to mention briefly the leading topics which have engaged the attention of this Society during the year just ended:

The first meeting, in November, 1876, was occupied by the reading of the President's Inaugural Address.

In December, George M. Beard, M.D., active member, read a paper on "Trance, or Somnambulism in its Medico-Legal Relations," which was unfortunately not published in our regular organ, The Sanitarian, and Organ of the Medico-Legal Society, but which appeared in full in the January number of the *Journal of Nervous and Mental Diseases*, Chicago, Illinois.

January 3d, 1877.—A large audience of members and citizens listened to a paper on "Personal Identity," by J. Appleton Morgan, active member, attorney at law and counselor, published in the "organ" of the Society, for January, 1877. At the same meeting, after a brief statement by the Chair, of which the Society had undertaken to do in the matter of school hygiene, a report was made by the committee on the subject. A paper was also read by Professor C. R. Agnew, M. D., by invitation, on the "Defects of Vision caused by Study, and by the bad Arrangement of Light in the School-Houses." The report of the committee, and Dr. Agnew's paper, are published in the "organ" for March, 1877. A lengthy discussion ensued, in which Mr. James Appleton Morgan considered, especially, the subject of Compulsory Education; Mr. Wm. A. Owen, Principal of the Eighty-seventh Street District School, the Condition of the

* Pronounced at Annual Meeting, November 7, 1877.

Schools, and the need of a Competent Medical Inspector, etc., etc.; Robert R. McIlvane, M. D., the Proportion of Blind to the Population, etc.; Moreau Morris, M. D., the Duty of the Health Department in reference to School Hygiene. Full minutes of this discussion will be found in the "organ" for April, 1877.

February 7th, 1877.—Dr. Alfred M. Carroll, active member, read a paper on the "Plea of Insanity," published in the "organ" for June. After which a paper on "Defective Vision in School Children," was read by the Secretary, contributed by invitation by Dr. Edward G. Loring, of this city-published in the "organ" for May, 1877, with the discussion which ensued, conducted chiefly by Jacob F. Miller, Esq., and Dr. R. J. O'Sullivan.

March 7th —Dr. Samuel A. Raborg, active member, read a paper entitled "Is the Connection of Charity with Correction, in the City of New York, useful? What should be the Policy of a Great City toward its Poor?" Discussed and published in the "organ" for July, 1877, with the debate; conducted chiefly by Simeon Sterne, late Com. P. C., etc., Dr. McIlvane, Hon. Frank Sherman Smith, Judge Fithian and Dr. Raborg. At this same meeting the Permanent Commission reported, through Mr. Yeaman, their reply to the inquiries made by the Philadelphia Obstetrical Society, relative to the laws of this State regulating the conduct of medical witnesses in confidential cases, and to the experience and opinions of the Society as to its practical working and value. The report was accepted and approved.

April 4th.—The Society listened to a paper, by Jacob F. Miller, Esq., active member, on "Medical Experts." No copy of this paper, nor of the discussion which ensued, has yet been furnished for publication. It is too valuable to be lost, and it is hoped that a copy will soon be furnished.

May 2d.—Dr. W. G. Stevenson, of Poughkeepsie, read, by invitation, a paper entitled "Criminality," which, having been discussed, was published in the "organ" for August and September.

June 6th.—Dr. Isaac Ray, of Philadelphia, the distinguished author of "Mental Pathology," "Mental Hygiene," etc.,

etc., honorary member of the Society, read, by invitation, a paper on "Testamentary Capacity." Published in the "organ" for October, 1877.

September 5th.—Dr. Tomas C. Finnell, active member, addressed the Society on the "Legal Responsibilities of those who administer Anæsthetics." A lengthy discussion ensued. The address and debate are still to be published.

The October meeting being for the annual election of officers, and for the auditing the reports of the officers, no paper was read. At the close of the regular business of the evening, however, on motion of Dr. J. F. Dunphy, the Chair was directed to appoint a committee of five, three of whom should be lawyers and two physicians, to report to the Society whether any farther legislation was required to prevent criminal abortions

The Chair appointed Drs. John F. Dunphy, James O'Dea, Jacob F. Miller, Freeman J. Fithian and Wm G. Davies.

At the same meeting, also, the Committee on the Hygiene of the Schools, made, through, Dr. O'Sullivan, a supplementary report, which was accepted and approved, and the committee continued.

It will be observed that, under our By-Laws, there are only eight evenings in the year devoted to the reading of regular papers and discussions thereon. Of these papers, the active members of the Society have contributed six, two of which were contributed by the lawyers and four by the physicians. The two remaining evenings were occupied by distinguished medical gentlemen from abroad (one of whom, Dr. Ray, was an honorary member), both of which papers related exclusively to medico-legal science. There have been presented also, and read, two carefully prepared and elaborate papers on State Medicine, not strictly medico-legal, contributed, on invitation, by medical gentlemen who are not members of the Society, but who are regarded as experts on the subjects upon which they wrote, and whose opinions were thought desirable in connection with the subject of School Hygiene.

All of these papers have been or will be published in our regular organ, except one, as has been already stated, and

will constitute, I am constrained to say, valuable matter for reference to the future student of medico-legal science and public hygiene.

The report of the Treasurer shows that, notwithstanding the smallness of the initiation and annual dues and the additional expense incurred for the better accommodation for the meetings of the Society, for the library, including room, rent, the purchase of books, insurance, and a very small salary to the Secretary, the amount of money now in the treasury is larger than is usual at the close of the year. Some portion of the fund, set aside last year for the increase of the library, has not yet been expended, on account of the difficulty of finding those books for which the Society most stands in need.

During the year the trustees have formally taken possession of all the property which could be found, and which, for the want of a home, was much scattered; and having secured a proper insurance, we may feel confident that none of our future accumulations will be lost—certainly not while the present efficient board of trustees remain in office.

I think it my duty to explain why so much of the time of the Society, both at the regular meetings and in the committees, has been occupied with the subject of School Hygiene—a subject which does not come wholly within the original purpose of our organization—and in an attempt to procure metropolitan and legislative action, with a view to its improvement.

It is now more than a year since this subject was brought to our attention by a member of the Society, and a former school inspector, Dr. R. J. O'Sullivan.

And, since then, as a result of our own inspections, and through various communications from those who are interested and possess knowledge upon the subject, our information has accumulated, and the conviction has forced itself upon us, that the condition of our schools is, in certain respects, bad—very bad—and that some remedy ought to be speedily applied.

The evils which we have observed are, briefly: overcrowding, especially in the primary departments; imperfect

ventilation ; bad arrangement of the light ; faulty construction and dangerous proximity of the water-closets ; too long confinement in the school-rooms ; admission of thousands of children at an age when they ought to be in the nursery or at play, namely, between the ages of four and six years (there are 17,000 children under six years in our school-houses); insufficient and unsuitable play-grounds ; the construction of large and expensive buildings on small lots, so that little or no space is left on either side for the admission of light and air.

Most of these evils are remediable at once, under proper laws and intelligent administration ; while some of them can only be remedied as new buildings are constructed and the old ones are abandoned.

We are informed that the Board of Education has hitherto paid no attention to the repeated complaints sent to it by the Board of Health ; but that the reports of the Medical Inspectors, who have been from time to time detailed for this special purpose by the Board of Health, have been passed unnoticed ; at least, they have provoked neither reply nor action. The evils complained of are not remedied—nor does the Board of Health attempt to enforce action by the exercise of its own legitimate authority.

We have reason to believe that our own respectful complaints and suggestions have been treated in the same manner. In short, we are made to understand that the Board of Education does not recognize the existence of but few, if any, of the evils to which I have referred. If such is the fact, then I think the members of this Society, and probably all who have made themselves acquainted with the hygienic condition of our common schools, will say that the Board of Education, as at present constituted, is either incompetent to judge of what are proper sanitary conditions ; or has taken no pains to learn the facts ; or is criminally negligent in giving information to the public, and in asking for help to enable it to correct the evils. In either case, with all respect for the gentlemen composing that Board, they are not the proper men for the responsible trust imposed upon them. Nor is it certain that the Board of Health

has done all it might do in this matter, to relieve itself of the same imputation.

The insalubrity of school houses—we beg to remind the Board of Education—may not be recognized by persons inexperienced in these matters, whatever intelligence they may possess in other matters, and who merely pass through the rooms in a "tour of inspection;" but the most inexperienced, even children under six years, will recognize their own discomfort, and the cause of it, if shut up many hours in hot and unventilated rooms—and they will generally contrive, under some pretense or another, to get out into the air. In the same manner, the brakeman or the conductor of a railroad-car, who passes in and out every few minutes, never discovers that the air is overheated or impure, until his attention is called to it by the suffering passengers. The case is very different, however, when an expert, hygienist—and all educated physicians are, or ought to be, experts in this matter—enters a school-house. To him a single inspection furnishes all the evidence required; and he might equally determine what the sanitary result must necessarily be, from a mere statement of the facts in any given case.

The medical man alone, also, observes and knows to what extent the various forms of disease to which children are liable, are referable to school-houses and school hygiene. He does not study these diseases and their causes exclusively in the school-room, but in the sick-room also; where the Board of Education, and the engineer, who is in most cases their only responsible inspector, seldom if ever enter; or if they did, their opinions as to the causes of the maladies they were permitted to see, would possess very little value.

The intelligent medical man even calculates with almost mathematical precision, and prognosticates the future, so far as the bad hygiene of the schools relates to the future condition of the child.

As he finds that in the large manufacturing towns of England, the children prematurely, and for two many hours, confined in factories, grow up into a race of men and women,

short in stature, crooked, rickety, blear-eyed, physically feeble and intellectually dull; so, also, he finds, or, if he has not actually found he has a right to infer, that a similar confinement in over-crowded and badily-ventilated rooms will produce the same results.

We ask for legislation to prevent the admission of children under six years of age.

It may be proper that the city should provide "nurseries" for children; but it would be easy to show that our school-houses are neither adequate nor suitable for such purposes.

We ask, also, that in the Board of Education, composed of twenty-one members, there shall be at least one medical man, appointed with especial view to his competency. There ought to be two; so that there may be a healthy attrition of opinions, and that there may be also the strength of union, when their opinions concur. One of the qualities essential to the "competency" of such appointee is an ability to stand upright under pressure—back-bone—a quality which is useful everywhere in life, perhaps, but which becomes indispensable when, as in this case, the odds would be greatly against us. I am informed that there are in the Board of Education six lawyers. The members are, therefore, probably well instructed as to their *rights*. We propose, on our part, to teach them some of their *duties*.

There ought to be, also, one Medical Inspector, independent of the Board of Education, assigned exclusively to the inspection of the public school houses.

Thus far our efforts to secure proper legislation and to influence municipal action have failed; but, so far as the Legislature is concerned, at least, we are not without encouragement.

I mistake, however, the temper of this Society, and of those who have been most active in the matter, if there is any disposition to relinquish the effort. The interests involved are too vast—the interests of more than a hundred thousand children; the evils are too great, and the encouragement is too liberal to warrant a suspension of our labors.

Parents constantly urge us to renewed exertions; school

teachers receive us with open arms, and beg us not to withdraw our hands; and the public press, with almost one voice, sustains and encourages us to continue the self-appointed champion and friend of the children.

We have no interest in the schools which every citizen has not. This large body of lawyers and physicians is not seeking to entertain itself and amuse the public by dramatic representations; we want no places, either of emolument or honor; we have no political ends to subserve; but we believe we have discovered great defects in our school system, and we are determined that, if possible, they shall be remedied. Let it be fully understood by all who are interested, and especially by those who, in their long personal experience and endurance of the evils, have become weary of waiting, that we are in earnest, and that we hope and intend to succeed.

It only remains for me, gentlemen, to thank you again for the honor you have conferred upon me, by electing me as your presiding officer during two consecutive years, and for the forbearance you have uniformly shown to me while occupying this chair, and to introduce to you my successor, the Hon. George H. Yeaman—a lawyer, eminent in the practice and exposition of law—late a representative in Congress, and Minister to the Court of Sweden—author of a work entiled "The Study of Government," which must be regarded as a monument of industry, learning and classical taste—a careful student of medico-legal science, and an active member of this Society. He is especially fitted for the place to which you have elected him by your unanimous vote. Under his guidance, and with the same kind support extended to him which you have extended to me, we have a right to anticipate a period of continued prosperity and usefulness.

Inaugural Address of the President-Elect, Hon. GEORGE H. YEAMAN.*

Gentlemen of the Medico-Lecal Society:—

In accepting the honor you have conferred, and the

* Pronounced November 7, 1877.

duties you have imposed upon me, by an election to the Presidency of the Medico-Legal Society, I have to observe that this mark of your confidence and esteem appears all the greater to me because it was expressed at a moment when at least some of you must have known that I was so situated in regard to other duties, and other demands upon my time and care, that I may not be able to give to the labors of the office that degree of diligence and that constancy of attention which their importance would merit, and which my own ardent desire for your success would otherwise cheerfully command at my hands.

Upon this point I am relieved from any apprehension of feeble executive action, by the character and efficiency of the gentlemen selected as First and Second Vice-Presidents.

And yet upon whomsoever may fall, from time to time, the discharge of these duties within the next year, the incumbent of this chair will suffer by your constant remembrance of, and comparison with, the conduct of the same office by our distinguished out-going President, who has just taken his official leave of you.

It would be useless for me, after the review just made by Prof. Hamilton, to attempt any extended summary or analysis of our last year's labors, nor will it be expected at my hands.

But I cannot refrain, in passing, from congratulating you that your labors in behalf of the health of the public schools, and in the manner of testing and preventing the adulteration of milk, as well as guarding the rights and liberties of those who might be convicted and punished upon insufficient tests, have attracted general and deep interest in this city and elsewhere; while the establishment and working of your Permanent Commission has resulted in the rendition of a full and careful report upon advice asked for by an eminent medical society of a neighboring State, in reference to a proposed amendment of their own statutory law, to protect, as confidential, communications between patient and physician.

As to the future of our Society, I hope there is no reason to fear that it will not be as prosperous, as interesting, as

instructive and useful as in the past; and there ought to be ground to hope that increased experience, a more thorough and effective organization, and a longer and better established position in the esteem and confidence of the public, will render your labors and discussions still more useful and effective.

The Medico-Legal Society, as its name imports is composed mainly of members of the medical and legal professions. It is not a medical society, nor a legal society, nor is it a mere club or social organization. It is strictly a scientific body.

As such, what is its province? While strictly scientific, its intended field of exploration and discussion does not embrace all of science—not even all of medical science, nor all of legal science. The medical side of this house would scarcely open a discussion here to instruct lawyers whether tuberculosis and scrofula are, or are not, the same disease, attacking or developed in different parts of the system; nor would the legal side of the house deem the time of this Society well spent in arguing to the doctors either that the New Code is or is not a better system of procedure than the one which it supplants.

Either medical science or legal science is a field of study and investigation, in which we may always learn, always advance, and still the horizon, the boundary of our knowledge, recedes from us, and seems wider in proportion as light becomes greater and clearer.

What is our joint portion of these vast expenses? It is this. At many points of investigation, of practice and discovery, the two professions meet, in so far that light from both is needed for a right solution; and knowledge of both, within certain defined limits, is needed for a correct and successful solution of the problem.

It is these points of common ground, common interest, professional contact, over which, in the technical language of my own profession, this Society may be said to "have jurisdiction"—a jurisdiction assumed by us in the interests of science, our judgments being worth just what our facts and reasons are worth.

Hence, one would naturally infer that medical jurisprudence would be the first and most important subject that would ordinarily and most naturally command our attention. And I believe it is historically true that this was the principal object in view, in the minds of those who organized and called into being this Society, as it was in the field of medical jurisprudence—a discussion and report upon the tests employed to detect poison in a celebrated criminal trial—that this Society gathered one of its first and brightest laurels.

And let no one suppose that these points of contact and mutual interests of the two professions, this limited scientific jurisdiction, furnish a field for inquiry and discussion too small to be interesting or useful.

The recorded lists of your scientific papers, and the official reports of your committees, attest the vast range and variety of the subjects which may properly be discussed here. Insanity, in all its forms, real or theoretical, its relations to legal capacity and legal responsibility, the widest and most varied field of our labors; toxicology, abortion, infanticide, effects of certain injuries from railroad accidents, adulteration of food, especially of milk, the sanitary condition and government of schools, testamentary capacity—a vast field, expert testimony—another vast field, chloroform as an agent to facilitate robbery, statutory protection of communications between physician and patient, heredity of nervous diseases, reviews of celebrated trials, questions in life insurance questions in malpractice, and many other subjects of absorbing and vital interest, constantly elicit, laborious and careful discussion at your hands.

Nor would I hold that our discussions and investigations should be too closely confined to medial jurisprudence, strictly and technically so-called. I would deem them properly confined only within the limits of those questions or points of mutual interest. One of the questions which has been laboriously investigated and fully discussed here, the sanitary—or, if some prefer, the unsanitary—condition and management of the public schools, can scarcely be called a question of medical jurisprudence; yet it is, or

upon occasion may become a fit subject for discussion by a Medico-Legal Society.

Another subject, embracing the first one mentioned, as well as all kindred questions, subjects of vast range and variety, and of vital importance, sometimes collectively expressed by the term "State Medicine," may properly receive a just proportion of your attention, involving, as it does, the question how far, and in what way, can or ought government to interpose for the protection of the health of the citizen.

If the question be whether better sewerage in the city or better drainage in the country should be established; or whether an artificial pond or lake, intended to adorn a landscape, has not become a laboratory of poison that needs to be abated; or whether blocks and acres of tenement-houses have not been so constructed as to destroy their occupants with typhoid, scarlatina and diphtheria; or whether a plumber has not so exercised the highest skill of his art in arranging the plumbing of a costly house in the fashionable quarter of the city, as to conduct the most of sewer poison in the most direct way into the sleeping apartments—in all these questions there are always two opinions or judgments needed (aside from questions of engineering skill) first, the medical opinion, whether a nuisance, a danger, an evil does exist, and its precise nature; next, the legal opinion as to how the remedy may or can be applied; whether existing laws and regulations are sufficient, if executed; whether there are any vested rights that cannot be encroached upon, even by additional legislation; and whether constitutional amendment may be necessary.

Thus it is that reports from your committees, composed of members from both professions, may be and are made to embrace all the material questions pertaining to a given subject, whether viewed from the medical or legal standpoint. But in enlarging, however little our field of discussion beyond subjects appertaining strictly and technically to medical jurisprudence, we should be careful not to go too far, and not, by our discussions here, convert this Societ

into a social science association, in which are discussed all things affecting man as a social being.

Behold the beauty and the invigorating effects, mentally and morally, of all such investigations and discussions. Science is knowledge—knowledge can only be perception, discovery, comprehension of truth. All truth is akin, related in some way to every other truth or fact in the universe ; and every fact casts its light upon, or has its relations with, some other fact or class of facts. The test of truth, the tuchstone of scientific reasoning, is the harmony of these relations.

We must apply this to our labors. Lawyers may demonstrate that government has power to do this or that, and may advocate the measure, but medical men may demonstrate that doing it would be an injury instead of a benefit. So medical men may demonstrate that certain things are extremely pernicious to health, individual or public, and may propose that doing or permitting such things be prevented, or even punished ; but the legal profession may interpose the obstacle that, under our form of constitutional government, the evils complained of cannot be reached by law, but only by reason and education, and could not be legally controlled under any form of government consistently with the preservation of personal liberty. Thus at every step within the field we propose to cultivate, a medico-legal consultation becomes necessary.

There is something in all this, and in all scientific investigations, which not only promotes the discovery of truth, but also nourishes, develops and intensifies the love of truth for its own sake, as does all devotion to science, by its truthfulness and carefulness of statement.

Lawyers, as such, may accuse each other of short cuts and trickery ; and medical men, as such, may have their rivalries and their disputes over the ethics of their profession. But whoever heard of a scientific man, as such, whether doctor, lawyer, chemist, geologist, astronomer or scientific man of all work, accusing another scientific man of willful falsehood in the statement of facts? They may doubt the sufficiency of evidence of the alleged or supposed

facts; or, conceding the facts to exist, may dissent from, criticise, ridicule the conclusions drawn from them; but the absolute good faith of the genuine devotee of science, in stating facts, seems to be generally conceded.

Scientific discussion has its rough points, sharp features and acute angles. It is sometimes wity, sometimes sarcastic, sometimes a little acid. And we cannot expect to escape these features of discussion within this hall, simply because we are men. Indeed a little liveliness may sometimes awaken an interest which would otherwise slumber.

But over all this, over pride of opinion, over all warmth, even over jealousy, if that evil monster could invade these precincts, Science will preside as the constant moderator and the ultimate arbiter; for we appear here not as the partisans of the medical view, nor the partisans of the legal view, but only as the searchers after and the advocates of Truth.

Allow me now to suggest for your consideration and better judgment a few thoughts as to the means of promoting the interests and usefulness of this Society.

There should be a constant and regular supply of appropriate papers to be read and discussed whenever other business will permit. Sometimes the reading and discussion of reports will occupy a large part of an evening, seldom all of it. But in a Society like this nothing can supply the place of well prepared scientific papers. And you should not rely entirely upon the exertions of one or more officers to secure the production of these papers. A presiding officer, though diligent in this respect, cannot always know who would like to read, or would consent to read, a paper upon any subject; and in soliciting a paper from one member, who, out of modesty, declines, might pass by another who is willing, or ready to read, but from the same modesty fails to offer himself. I would see no impropriety in members who would like to read on any particular subject mentioning it to the proper officer, and arranging to have his subject placed on the list of propective papers; and members are invited to do so.

Concerning the distribution and disposition of scientific

questions, I would submit that the aim should be to have as many as possible of your members to engage in them, and that the effort should be to have the interest and the responsibility of inquiry and determination distributed as generally and as evenly as the opportunities and willingness of members to do the work would make practicable. However learned, able and useful your Permanent Commission may be, the welfare of the Society, and the interest of members in its labors, would not be advanced by making or allowing such a standing committee to become the absorbent or receptacle of all scientific questions arising here. It ought not to be made, or allowed, to supersede the business and duties of special committees, and thus make the other active members of the Society feel that they have nothing to do, and can be of no aid or use in our investigations. It might be difficult to draw any accurate line of demarcation between it and other committees, but I would suggest, in general terms, that any question arising in a meeting of the Society by motion, resolution, or vote of inquiry, might very well be referred to a special committee to be appointed for that purpose, while any questions arising by correspondence, inquiry, or reference, from other sources, and referring not to routine business, nor to the interests of this Society, as such, but to a purely scientific or medico-legal question, and arising in the interim of our meetings, might be laid before the Permanent Commission in the manner provided for in its organization; and such, I understand, was the object and aim of its distinguished prototype, the Permanent Commission of the Medico-Legal Society of Paris.

I submit that some more definite plan should be adopted, if at all practicable, for the publication in permanent form of our papers and transactions. The present mode of publication in the organ of this Society is good and useful so far as it goes. Do we not need and merit more than this? Other scientific societies and associations publish their transactions in a form more convenient for use and reference, and more sure and easy of permanent preservation. The second volume of our papers and transactions remains

unpublished, while material for a third volume has in great part accumulated. This is, upon every account, to be regretted, and it is to be hoped that in this respect we may not longer continue to lag behind sister societies. And whether our papers and transactions are to be published in volumes or not, I submit for your consideration whether an arrangement cannot be made, within the means of the Society, or by the co-operation of authors and the publishers of THE SANITARIAN, to have our papers printed and distributed in pamphlet form. By this means a copy of every paper could be placed, soon after being read here, in the hands of any member of the Society; many would read who cannot always be here to listen. A more lively interest would be kept up in our proceedings and discussions, and this publication, either in book or pamphlet form, would often enable us to make exchanges with other Societies in this and foreign countries, and thus be making valuable additions to our library.

To increase and preserve, to render complete, and therefore great and useful, the library of this Society ought to be among our most cherished aims and purposes. Libraries are the centres and foci into which the world's thought is condensed, in whose folds truth finds permanent lodgment, surrounded by an army of witnesses. Libraries are the luminaries from which radiate the beams and floods of light to guide and strengthen the race in its search after undiscovered facts, while assuring the mental grasp upon the harvest already gathered. We have made a good beginning with our library. Time, labor and money have been expended upon it. It is already a good collection—one of the best of the kind on this continent. But it is not complete. It can be made fuller and better. The desirableness of doing this is not open for discussion. But plans and means need to be devised and executed. The plan of soliciting and securing contributions of books and pamphlets has been so fruitful and successful in the past, that we may still hope to rely in part upon that mode of increase in the future. But while employing this means to increase and build up our library, some care must be exercised to prevent the ac-

cumulation of a uselessly large number of copies, especially old editions, of the same work, and to prevent lumbering our shelves with donations of books, very good of their kind, but wholly foreign to our subjects of inquiry and discussion. The other plan, that of direct purchase of books with our own funds, or with donations of money made by others for that purpose, has the advantage that we may thus make sure of the latest editions, and make such selections as demands for books by members, and discovered deficiencies, indicate to be necessary. By this means a library grows, not merely in size and numbers, but also in completeness, in unity and efficiency.

Touching two of the subjects to which I have called your attention, and upon which I would recommend your action—I mean publishing our papers and transactions, and increasing our library—I am aware that expense is the great difficulty which meets us at the threshold. While I am not prepared actually to recommend that our revenues be increased by an increase of our annual dues, yet I do venture to submit for your consideration whether such a measure would be wise and practicable. If it could be done without injury to the Society, then certainly our increased ability to print and to buy would lend an increased interest to the Society in the eyes of all, both members and the public at large.

Again thanking you for the honor you have conferred upon me, and doubting my ability and opportunity to serve you as others might, I am yet sure that no member of this Society entertains a more ardent wish than myself for your success, your prosperity, your renown, and your continued and increased usefulness.

On the conclusion of the Inaugural Address, Clark Bell, Esq., Jacob F. Miller, Esq., and J. C. Peters, M. D., were appointed a committee to report upon the recommendations of the President.

Mr. Clark Bell was invited by the Society to prepare for the Society an account of his recent visit to London and Paris, and to the leading scientists in those cities, which he promised in time for the January meeting.

Mental Responsibility and the Diagnosis of Insanity in Criminal Cases.

By E. C. MANN, M. D.*

At the present day medico-legal cases are becoming very frequent, in which it is necessary to ascertain as to the insanity of a person accused of a criminal act, in its relation to his civil capacity, and responsibility for criminal actions, and also as to feigned or concealed insanity. It becomes, therefore, a very interesting question as to what test of insanity the law should recognize as a valid defence in criminal cases This question, although one which it seems difficult to settle satisfactorily, and over which judges, lawyers, and medical experts are constantly disputing, assumes every day greater interest and wider significance, owing to the increase of insanity in our country disproportionate to the increase of population during the past twenty years. Without inserting dry statistics, it is sufficient to say that a comparison of the increase of the population from 1850 to 1870, with the increase in the number of insane during the same period, reveals an increase of insanity over that of population of about 12 per cent. In the foreign element this is due to marked changes in habits of living, the changes of food, increased intemperance, working more in-doors, living in badly ventilated tenements, disappointment in business expectations, etc., all of which causes combined tend to impair health, break down the nervous system, and tend insensibly toward insanity in the offspring. The increase of insanity in our native population is due largely to a change from a vigorous, well-balanced organization to an undue predominance of the nervous temperament which is gradually

* Read before the Medico-Legal Society, January 2, 1878.

taking place in successive generations. The educational pressure on the young, to the neglect of physical exercise; the increasing artificial and unnatural habits of living; the great excitement and competition in business are all tending to induce and multiply nervous diseases, many of which must terminate in insanity. These causes and the evils resulting from them are propagated by the laws of inheritance in an aggravated and intensified form. Insanity is also appearing gradually at an earlier age than formerly. In former years the average period at which the greatest number became insane ranged between the ages of thirty and forty; but an analysis of statistics shows that this average age is coming on at an earlier period, generally appearing between the years of twenty and thirty. This is owing to hereditary influences, which have gradually become intensified by violation of physical laws in early life, want of proper training, or too high pressure in education; and is also due largely to the great mental activity and nervous strain which characterize the present age and state of civilization, and which tend to cause rapid decay of the nervous system. With many persons it is but a step from extreme nervous susceptibility to downright hysteria, and from that to overt insanity. The question of mental responsibility in its relation to criminal cases is one of great interest, and presents a wide field for study and investigation.

The facts of criminal psychology have led the writer to regard the impulse of criminal natures in the light of natural laws; and there is, beyond doubt, an anthropoligical change which lies at the foundation of criminal propensities. There is a deficient cerebral organization, which lies at the base of these criminal natures, which occasions the disposition to an abnormal moral constitution. The dislike of work and the love of enjoyment are impulses which, when combined, lead especially to crime when that ethic constitution or development is wanting which is necessary to the foundation of a powerful feeling of what is right. A further fundamental element which stands in psycho-physical contrast to dislike of work is a consciousness of excessive physical strength, which leads to arrogance, and thereby to

the pleasure of misusing strength against weakness. This impulse leads to the love of bullying, cruelty and murder, if the higher intellect is absent which should turn the feeling of strength in a right direction; and there is also absent a complete ethical consciousness which should prevent misuse of power. This ethical weakness may be congenital, as has been remarked, or it may arise from deficient education. In the domain of vices, we meet with a peculiar condition of the central nervous system which results in a temporary criminal impulse returning with a certain regularity. Such criminals are temporarily seized with the deepest remorse, and are fortified with the best resolutions. They behave for a time in a most exemplary manner, until they relapse again, which relapse is unanimously attributed by them to an irresistible impulse. This state of *moral epilepsy* is of great significance in the psychology of crime, as a physilogist is led to institute a comparison between such cases and several states of disease, in which a peculiar type is observable, consisting in the fact that attacks of illness of more or less duration alternate with more or less long, and, generally for a time preponderant, healthy intermissions. In a broad sense, we may designate all these pathological states as *epileptiform*, hence the term *moral epilepsy*, which has been adopted above.

Leaving this interesting question of the psychology of crime to proceed with the diagnosis of itsanity in criminals, we should ask if the true basis of jurists to proceed upon is not *the protection of the existence of normal persons against the ethically degenerate? And the necessary degree of this protection is, most certainly, an essential measure for the severity of the punishment.* The first trial of note where there was a question of insanity advanced was in 1723, when the trial of Arnold for shooting at Lord Onslow occurred. Although it was shown that Arnold had been of weak understanding from his birth, and that he was doubtless insane, the jury brought in a verdict of guilty, and Arnold would have been executed had it not been for the intercession of Lord Onslow. The language of the charge to the jury in this case was in conformity to the rule laid down by Lord Hall, that partial insanity does

not excuse a person from the consequence of his acts, and that only a total deprivation of reason can furnish such excuse. In the year 1800 the celebrated trial of Hatfield, for shooting at the King, in Drury Lane Theatre, excited much interest. Although it was proved that in 1793 Hatfield, who was a dragoon, had received a number of severe wounds, which had caused partial insanity, so that he was dismissed from the service, and since that time he had had periodic attacks of insanity, and had been confined as a lunatic, the prosecuting attorney laid down the established rule that a total absence of memory and understanding could alone shield the prisoner from punishment, and appealed to the jury for a conviction on that ground. It was only through the brilliancy of the advocate, afterward Lord Erskine, that the prisoner was acquitted. This trial had a good effect upon the judiciary, as in the year 1812, in the trial of Bellingham for the murder of Spencer Percival, Lord Mansfield laid down the law that the capability of distinguishing between right and wrong was the test for determining the prisoner's responsibility, thus discarding the old theory of an entire absence of all mental power, and substituting this in its place. Afterward the theory of a general knowledge between right and wrong was modified, and the element introduced that the prisoner must know the difference between right and wrong at the the time of and with regard to the particular act for which he is on trial, in order to render him responsible, and this test has been preserved to the present time. In the early history of own country the same barbarism in the treatment of the insane prevailed which darkens the pages of English History. In Governor Winthrop's "History of New England," the case of Dorothy Dalbyr is mentioned, who was executed for killing her child. She was beyond all doubt an insane woman; but this fact was not recognized by Governor Winthrop, who says of her that "she was so possessed with Satan that he persuaded her, by his delusions, which she listened to as revelations from God, to break the neck of her own child that she might free it from future misery." Such was the ignorance and predjudice of the early history of our country. We are at the present day

very far from a correct understanding of the workings of the insane mind, for in the recent trial of Scannell the law was laid down as enunciated by the Court of Appeals in 1865, in the case of Willis *v.* The People, which held "that a person was not insane who knew right from wrong, and that the act he was committing was a violation of law and wrong in itself." This theory of right and wrong is utterly inadequate to meet a large class of cases. There are certain cases, familiar to all specialists in insanity, which suffer from impulsive insanity, with a homicidal or suicidal monomania. These patients, without appreciable disorder of the intellect, are impelled by a terrible *vis a tergo*—a morbid, uncontrollable impulse—to desperate acts of suicide or homicide. These patients, often, are fully aware of their morbid state, appreciate perfectly the nature of the act toward which they are impelled, and feel deeply the horrors of their situation ; and yet, if not prevented by restraint, will inevitably commit acts of suicide or homicide. A very remarkable case was under the care of the writer, of a man who would, at stated times, acknowledge that he felt an irresistible desire to kill some one, and would voluntarily enter an asylum and remain there until this morbid impulse had passed away, which was generally a period of one or two months. He has often told the writer that his life was made miserable by the idea that at some time this overwhelming impulse would come upon him so suddenly that he should commit some desperate homicidal act ; but is not prepared to voluntarily incarcerate himself in an asylum for life, as his lucid intervals somtimes lasts for months at a time. The law as laid down at present would not decide this man to be insane, as he fully appreciates the difference between right and wrong, and the nature and consequences of any homicidal act that he may in the future commit. Such cases, which are not at all uncommon, serve to show what fearful injustice may be done under the name of justice when the conclusion is based upon a metaphysical test which is proved by medical observation to be false in its application to the unsound mind. There is still another form of insanity, denominated "Moral Insanity," in which the intellectual faculties are intact, no delusions, or hallu-

cinations existing, but where the moral sense seems utterly obliterated. Such persons have no true moral feeling. This is a disorder of the mind produced by disease of the brain, and is an unqestionable form of insanity, as it often precedes other forms of insanity in which intellectual derangement is well marked, as acute mania or general paralysis. In some of these cases there is a modified responsibility, the degree of such responsibility being determined by the particular circumstances of each individual case.

One difficult but important question to be solved is the civil and criminal responsibility of women who plead insanity before courts of justice, and who are often afflicted with kleptomania, pyromania, or who are infanticides, as the result of sexual trouble and disease of the pelvic organs. Such women, under all reasonable conditions, are entitled to the benefit of the doubt, because of their defective mental integrity, caused, perhaps, by pregnancy or by the subsequent emotional excitement attending parturition, which intensifies the cerebral disorder in a brain already morbidly active. With women, extreme nervous susceptibility readily lapses into insanity. In the sexual evolution, in the parturient period, in lactation, strange thoughts, extraordinary feelings, unseasonable appetites, criminal and suicidal impulses may haunt a mind at other times innocent and pure. It is probable, also, that young unmarried women, guilty of killing their new-born offspring, are so distracted by conflicting feelings, sharpened to morbid acuteness by the great physilogical movement of parturition, as to be hardly responsible for their acts.

We come now to the question of the diagnosis of insanity. In most diseases we examine physical signs and symptoms and determine by our senses the existence of such diseases. In insanity, on the contrary, we have to be guided chiefly by our knowledge of the normal functions of the mind, and in our examination have to rely on our intellect rather than our senses, although of course the latter are called in to assist us. It is, however, very often extremely difficult to decide with certainty, as medical experts are expected to do, as to the existence of mental disease. In making an examination of a

person accused of crime, and in whom insanity is suspected, the person should be visited by the medical examiner, who should draw him into a pleasant conversation, and inquire as to previous attacks of insanity, hereditary history, then into any predisposing causes of insanity, such as intemperence, vocation, habits, etc., which may have operated in the production of insanity. Also as to injuries of the head or spine which may have occurred, sunstroke, etc. The nervous system should then be examined for the existence of any such diseases, as paralysis, epilepsy, catalepsy, or hysteria. The different senses, beginning with sight, should also be examined, and in this way it may be discovered if there are hallucinations or illusions pertaining to the senses. A great many cases are on the border line which separates sanity from insanity, and it often requires the nicest discrimination to determine whether such a patient has passed this border line. The writer would suggest a series of eight questions which, if adopted by jurists in criminal cases, would prove a most efficient and just test as to the existence of insanity in any given case.

1. Have the prisoner's volitions, impulses, or acts been determined or influenced at all by insanity, and are his mental functions—thought, feeling, and action—so deranged, either together or separately, as to incapacitate him for the relations of life?

2. Does the prisoner come of a stock whose nervous constitution has been vitiated by some defect or ailment calculated to impair its efficiency or derange its operations?

3. Has the prisoner been noticed to display mental infirmties or peculiarities which were due either to hereditary transmission or present mental derangement?

4. Has the prisoner the ability to control mental action, or has he not sufficient power to control the sudden impulses of his disordered mind; and does he act under the blind influence of evil which he can neither regulate nor control?

5. Has the act been influenced *at all* by hereditary taint, which has become intensified so that the morbid element has become quickened into overpowering activity, and so that

the moral senses have been overborne by the superior force derived from the disease?

6. Was the act affected by, or the product of insane delusion?

7. Was the act performed without adequate incentive or motive?

8. Does the prisoner manifest excitement or depression; moody, difficult temper; extraordinary proneness to jealousy and suspicion, or habit of unreasonably disregarding ordinary ways, customs and observances; an habitual extravagance of thought and feeling; an inability to appreciate nicely moral distinctions; and finally does he give way to gusts of passion and reckless indulgence of appetite?

Some or all of which are generally found in connection with transmitted mental infirmity. It may be argued that these mental defects signify not unsoundness, but human imperfection. Certainly if we take these manifestations, any one of them singly and alone, we cannot claim that such a one is invariable an indication of insanity; but, on the other hand, under certain circumstances each one of them may be an unmistakable sign of insanity, or rather of a morbid cerebral state which may readily lapse into insanity. The disappointments and calamities of life obviously act with greater effect upon an unstable mental organization; these causes of disturbance meeting with a powerful coöperating cause in the constitutional predisposition. Sometimes a crime, even when there have been no previous symptoms to indicate disease, marks the period when an insane tendency has passed into actual insanity—when a weak organ has given way under the strain put upon it.

There is a class of persons, with a peculiar nervous temperament, and in some cases with a specially insane temperament, who inhabit the borderland between crime and insanity, one portion of which exhibits some insanity, but more of vice, and the other portion of which exhibits some vice, but a preponderance of insanity; and it is very difficult to form a just estimate of the moral responsibility of such persons, especially when we reflect upon the fact that moral feeling is a function of organization, and is as essentially

dependent upon the integrity of that part of the nervous system which ministers to its manifestations as is any other of mental function. The writer has met with cases in which, as a result of parental insanity, there has been a seemingly complete absence of moral sense and feeling in the offspring; and this has been a true congenital depravation, or a moral imbecility, so to speak. Of course such children can hardly fail to become criminals. In this connection it is interesting to note that moral degeneracy often follows as a sequence upon disease or injury to the brain. A severe attack of insanity sometimes produces the same effect, the intellectual faculties remaining as acute as ever, while the moral sense becomes obliterated. When such persons are acquitted, on trial for a criminal act, on the ground of insanity, they should be remanded to medical custody, and should never be set at liberty until the medical superintendents of asylums deem them fully recovered. But the commonest justice plainly indicates that such custodial restraint be of a medical, and not of a penal nature. It is a very difficult thing for the laity to realize how sane a person may appear, who all the while has a greater deragement than was even suspected, until something happens to elicit the evidence of it, such as an attack of illness or severe mental strain, some unconquerable impulses seizes him, and some homicidal or suicidal act results to the great surprise of every one. In the same manner inebriety often appears in maturity as a result of ill health, mental shock, etc.; and it becomes an interesting question as to the degree of moral or criminal responsibility which attaches to inebriates, as inebriety often depends upon an abnormal organic development of the nervous system that has descended from generation to generation, gaining in intensity until it manifests itself in active inebriety, and there must certainly be a modified responsibility when homicidal or suicidal acts are committed during periods of such abnormal cerebration. In such cases a criminal act may be committed in consequence of cerebromental disease, without any apparent lesion of the perceptive and reasoning powers. In these cases, also, the mental disorder is of a sudden and transitory character, not preceded

by any symptoms calculated to excite suspicion of insanity. It is a transitory mania or sudden paroxysm, without antecedent manifestation, the duration of the morbid state being short, and the cessation sudden. In these cases the criminal acts are generally monstrous, unpremediated, motiveless, and entirely out of keeping with the previous character and habit of thought of the individual. Such attacks are transient in proportion to their violence, and the transition occurs on the completion of the act of violence. There is an instantaneous abeyance of reason and judgment, during which period the person is actuated by mad and ungovernable impulses.

We will now consider briefly the medico-legal importance of *epileptiform attacks* which may be partial in character and which may not reach convulsive activity except so far as the mind is concerned. These attacks *always display* periodicity, and *after* the paroxysm there is an intermediate stage, during which in most cases the person remains in a confused state perhaps for some hours, and is apt, subsequently, to retain only a vague and general notion of the preceding events. Thus in a homicide by shooting, the murderer would be likely to be roused by the sound of the pistol-shot and to remember it, although he would not very likely remember the altercation at all, or what passed between them. A case occurred recently of considerable interest from a medico-legal point of view, in which a murder was committed during an epileptiform seizure, or rather, more strictly speaking, during a state of transitory moral epilepsy, which was the result of a previous sunstroke, the immediate exciting cause being an attack of illness and the taking of a small quantity of alcoholic stimulus, which it is well known acts as a poison upon persons who have been sunstruck. This state of "moral epilepsy" is a morbid affection of the mind centres, which destroys the healthy co-ordination of ideas and occasions a spasmodic or convulsive mental action. The will cannot always restain, however much it may strive to do so, a morbid idea which has reached a convulsive activity, although there may be all the while a clear consciousness of its morbid nature. The case just

referred to had complained of pains in the head and sleeplessness, which had displayed marked periodicity, and which had been accompanied with great irritability of temper excited by trifles and seemingly unconnected with personal antipathies. As has been previously stated, the person alluded to had been suffering from quite a severe illness, and, after taking a small quantity of alcoholic stimulus, went out to walk. He met a friend with whom he had been familiar for years, and a discussion arose as to the respective merits of certain politicians, when, the discussion becoming excited, the man pulled out a revolver and shot h s friend. He then went in a confused and dazed state and sat for some hours upon a dock near a river, and subsequently went home and burst into tears, and informed his wife of the sad occurrence, and gave himself up at the police station. There was no simulation of insanity by pretending to be incoherent, or by strange actions, and no attempt either on the part of himself or wife to pretend that the act was an insane one. There was, however, a total blank in the prisoner's mind respecting the events immediately preceding the pistol-shot, which seeemed to have aroused his attention for the time ; and he had no recollection of the fact that he sat on the dock for some time afterwards, as he was seen to do. The writer was consulted as an expert, and upon ascertaining the prisoner's previous history gave it as his opinion that there had existed for months previous to the occurrence a profound moral or affective derangement, which from its marked periodicity was evidently epileptiform in character, and that the sudden homicidal outburst supplied the interpretation of the previously obscure attacks of recurrent derangement. There had evidently been induced by the sunstroke in this case an epileptiform neurosis, which had been manifesting itself for months, chiefly by irritability, suspicion, moroseness, and perversion of character, with periodic exacerbations of excitement, all foreign to the man previous to the attack of sunstroke. It is well known among specialists in insanity that this epileptiform neurosis often exists for a long time in an undeveloped or marked form, and this neurosis is, moreover, connected with both homi-

cidal and suicidal mania. Such attacks often are noticed to occur periodically for some time before the access of genuine epilepsy. I have often witnessed in cases under my charge abortive and incomplete epileptiform attacks where there were no convulsions and where there was no complete loss of consciousness. I have noticed in such cases either a momentary terror, slight incoherence, a gust of passion, or a mental blank, the patient perhaps stopping in the middle of a sentence. The patient would then be himself again, quite unconscious of what had happened to him. Accompanying this confusion of ideas may be, as I have remarked, instantaneous impulses,* either of a suicidal or homicidal nature. This class of patients I have always found irritable, easily excited, very emotional without adequate external causes, easily losing their train of thought, and often unable to collect or fix their thoughts. Such cases have told me that they felt themselves changed in character, and have acknowledged that they often felt impelled to strange and violent acts by some power which they could neither understand nor resist Such patients may entertain delusions of fear and persecution, and commit criminal deeds, as a result of such delusions. When such cases, in their terror or distress of mind, commit some violent deed, that they either experience immediate relief—as was the case with one patient under my care, who was only relieved by suddenly breaking out a pane of glass when his paroxysm would subside ; or they continue in a state of exitement unconscious, or very imperfectly conscious, of the gravity of their acts. When they become conscious again, their memory is apt to be very uncertain as to preceding events. Griesinger says "Individuals hitherto perfectly sane, and in the full possession of their intellects, are suddenly, and without any assignable

* Owing to the writings of Highlings Jackson, Maudsley, Russell Reynolds, Hammond, Trousseau, Faliet, Esquirol, and others, epileptic vertigo is a recognized disease. There is abundant testimony to show that during such seizures persons may perform actions, and even speak and answer questions, automatically. There are numerous examples in the works of the above authors proving that in an unconscious condition persons can progress from odd or eccentric actions to deeds of violence, suicide, or murder, being unable to remember the circumstances afterwards, *and therefore irresponsible for their actions.*

cause, seized with the most anxious and painful emotions, and with a homicidal impulse as inexplicable to themselves as to others. Maudsley says, "Let it be borne in mind, then, that there are latent tendencies to insanity which may not discover the least overt evidence of their existence except under the strain of a great calamity, or of some bodily disorder, and that the outbreak of actual disease may then be the first positive symptom of unsoundness." The question as to the degree of mental responsibility attaching to such cases is one of great interest to psyschologists and also to jurists, and one to which it is hoped in the future much more attention may be directed than has been given to it in the past.

In closing this paper I propose to consider very briefly the tenability of the position which has been assumed by some jurists, and also, I am sorry to say, by some medical men, relative to criminal cases, in which it has been asserted that it is the habit of counsel to retain medical experts as special pleaders—not to give an impartial scientific opinion, but to concoct the same ingenious case for the defence. Before criticising such assertions I would remark, what is already known to most of the medical and legal gentlemen present, that the men who obtain the most correct theories of human conduct; the men who discover in the highest degree the secret springs of action; the men who penetrate the most deeply into the mysteries of human delinquency, do so by the study of morbid psychology in that broad and liberal manner which is possible only amid large collections of the insane, and are the men who have been accused, as I have stated, of being in the habit of prostituting their scientific opinions. I would remind such critics that imperfection, deficiency, or obliquity of human conduct are generally supposed at the present day by the greatest thinkers to be the result of organic influences, and the revelations of character so often found on the records of our courts can be cleared up in no degree except by the profound study of organic conditions, in connection with abnormal mental phenomena. By the aid of such study history and biography would be read by the aid of a new light, and it would

be seen that much of what is called genius is the result of a morbid organic activity; and that the saints, heroes and martyrs of history have become such more by virtue of a peculiar temperament than by the profound sense of moral or religious obligation; and also that many of the horrible crimes classical in history have proceeded rather from cerearal disorder than a native thirst for blood. The expressions of contempt and disgust which have characterized the remarks of the critics of medical experts, we take it, are owing to the fact that they do not always display invariable unanimity of opinion on questions of mental pathology whenever they appear on the witness-stand. Discrepancy of opinion to such critics evidently implies incompetency, to use the mildest term, and it would seem to appear that they expect of experts nothing short of omniscience and infallibility. The stand which has been taken by such persons shows a great want of intelligent thought on the subject, for it is about as reasonable to expect from medical experts invariable unanimity of opinion on the witness-stand as it would be to suppose that every judicial decision expressed the united opinion of the full bench, or that the followers of physical science should be unanimous regarding all points in science. I venture to say that there is no scientific study which ensures any nearer approach to unanimity of opinion among its followers than does that of insanity. In alleged cases of insanity different alienists truly and faithfully declare the results of actual observation, while the subject matter is often regarded from various points of view. One expert may arrive at the conclusion that the person is not insane, while another, guided by a class of cases that have come under his notice, though perhaps scarcely known to the other, sees indications of insanity in certain acts or traits that otherwise he would have regarded as merely the singularities of a sane mind. The objections of such critics depends on a complete ignoring of the exact purpose of skilled testimony in judicial proceedings. I enjoy the honor of the acquaintanceship of many of our most eminent experts, and I have never yet seen a case where judgment has been warped or perception of truth dulled or modified by the fact of compensation. Such opinions as have been given have

been, so far as the writer has known, honest and conscientious. It is doubtless true that there are men who labor under the infirmity of supposing that a little actual knowledge warrants them in claiming a great deal they do not possess, and that thus opinions are foisted upon the jury utterly unworthy of their confidence; but that this the case with medical experts deserving of the name I utterly deny. The class of persons whom I have alluded to severely criticise the theory which supposes that a man may, under the influence of periods of abnormal cerebration—of sudden and transitory mental disorder—commit criminal acts, and immediately afterward undergo a sudden transition to a normal state of cerebration. Such persons cannot be familiar by experience, I think, with the first symptoms of approaching mental derangement—with its sudden exacerbations and and reasoning unreason—and cannot know how little power of control there often is over suddenly arising morbid ideas or impulses, or they would be more careful about denying the irresponsibility of the actions of persons displaying such impulses Such persons consider moral feeling from a mental standpoint, and without reference to its connection with physical structure; but, as I have previously remarked, moral feeling is a function of organization, and cannot with propriety, I think, be separated from it. One of the very earliest symptoms of insanity, as most alienists are aware, is a complete deadening and perversion of the moral sense, and this symptom often ushers in mental derangement which subsequently exhibits intellectual impairment and decay, the disorder running through the various phases of insanity, and terminating in dementia, organic degeneration of the brain, and finally death. In irresistible impulse, which has a shorter duration than transitory mania, to which it is allied, we shall generally find hereditary taint, which establishes partially its claim as a separate and independent form of insanity. It has a shorter duration than transitory mania, and a perfect recollection is retained of what takes place during the paroxysms, and it has no apparent cause; whereas, we can detect cerebral congestion in transitory mania, which generally can be traced to intemperance or epilepsy, as in the case I have previously

mentioned. I have traced in patients suffering from irresistible impulse, where the disease, for disease it is, consists in the blind impulse, and where there is often a terrible struggle maintained between the deliberation and directing powers and the overpowering morbid will, a premonitory stage, which has consisted either in general malaise insupportable general feelings of weight, distress, anxiety, fear, or local sensations in the head. Sometimes trivial external causes provoke the outburst of fury. Patients have confessed to me that irresistible homicidal impulses have taken possession of their minds wildly and forcibly, and in instances where the intended victim has been a person regarded with strong affection. The contest which is often maintained between two spiritual personalities in the same individual is at times terrible, as in the case of hypochondriac who, in dread of yielding to a homicidal impulse, cut off his arm. That such irresistible impulses are disease, and are dependent upon physical changes, is proven by the fact that, like other forms of nervous disease, they are cured, sometimes on the establishment of puberty, sometimes by work or occupation, and sometimes by a powerful moral shock ; also it is proved by the fact, which I have before alluded to, that there are often, the same precursory symptoms which attend other forms of the neuroses, such as exalted sensibility, neuralgic suffering, sleeplessness, difficulty in fixing attention, and many vague, indefinable sensations.

I have endeavored, as well as I have been able, to present a series of psycho-physical disturbances which more or less affect the soundness of reason and which also affect, in various degrees, spontaneity. I have tried to demonstrate states of constitutional disturbance, under which, I think, observers will agree, it is difficult to conceive how the intellect can act either calmly or clearly, and, in closing, can only express the wish that this subject will in the future be established on a sound basis by the united labors of the medical and legal profession of our own country ; and I think it can hardly fail to do so, under the cognizance of so many gentlemen already eminent for their advice in psychological discrimination.

Expert Testimony—Its Nature and Value.

By JACOB F. MILLER, Esq.*

It is the object of evidence to establish facts for judicial determination. Such evidence consists of written documents or depositions of living witnesses. These are of two kinds, viz: Ordinary witnesses, who depose to facts; and experts, or skilled witnesses, who depose to matters of science. The former tell what they know, the latter tell what they think—what they believe The first state facts, the latter tell what the facts mean.

"An expert," says Worcester, "is a person having skill and experience or knowledge on in certain professions—a scientific witness." He is one taught by experience. His knowledge extends beyond the reach of ordinary men. It reaches the domain of science.

Experts were known to the Roman law, and during all the history of the common law. Indeed, notwithstanding the unsatisfactory nature of much of the expert testimony produced in our courts, it is difficult to see how the use of this class of testimony can be avoided. Courts and juries are not presumed to be skilled in all the scientific questions which are involved in the cases that they are called upon to try. They cannot understand the evidence produced. They need an interpreter. A witness who speaks German cannot be understood by a juror who knows no other language than the English. To become intelligible, some one must translate it, tell what it means. So a homicide has been committed, a pistol-ball has entered the body of a person, who

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soon thereafter died. Did the shot cause the death? It may or may not have done so. It is necessary that some one acquainted with the effect of gun-shot wounds should be called to testify as to the probable cause of the death, and explain the connection between the cause, the pistol shot, and the effect, viz.: the death. A drug has been administered. Soon thereafter the receiver of the drug dies. Was he poisoned? It requires the skill of one who knows what the poison is, what its effects are upon the human system, and how its presence can be protected, to determine this question; a special knowledge is required from the person who is to give an opinion as to the cause of death. The rule in such cases is well stated in Cooper *vs.* The State, 23 Texas, Rep. 336. The Court said:

"It is a familiar general rule of evidece that witnesses must speak as to the facts, and cannot be permitted to give their belief or opinion. It must be left to juries to draw inferences from the facts. But to the general rule here stated there are exceptions. In certain cases certain persons may give their opinions to the jury. I cannot better state the principle on which the exceptions to the general rule repose than by quoting the language of the Judge who delivered the opinion of the Court in the Jefferson Insurance Company *vs.* Cotheal, reported in 7 Wend, 73. In that case Judge Sutherland said: 'On questions of science or skill or trade, persons of skill in those paticular departments are allowed to give their opinion in evidence; but the rule is confined to cases in which, from the very nature of the subject, facts disconnected from such opinions cannot be presented to a jury as to enable them to pass upon the question with the requisite knowledge and judgment. Thus a physician, in many cases, cannot so explain to a jury the cause of the death, or other serious injury of an individual, as to make the jury distinctly perceive the connection between the cause and effect. He may therefore express an opinion that the wound given, or poison administered, produced the death of the deceased; but in such case the physician must state the facts on which his opinion is founded.'"

And Mr. Starkie states the rule in these words: "The general distinction is that the jury must judge of the facts for themselves; but that whenever the question depends on the exercise of peculiar skill and knowledge that may be made available, it is not a decision by the witness on a fact to the exclusion of the jury, but the establishment of a new fact, relation, or connection, which would otherwise remain unproved."

And Mr. Greenleaf says that "where scientific men are called as witnesses, they cannot give their opinion as to the general merits of the cause, but only their opinions as to the facts proved."

Physicians may appear in two capacities. When they depose to facts they differ in no respect from ordinary witnesses—their testimony is then confined to their knowledge of the facts of the case. They may also be called as experts. It is in this capacity that we are interested in them to-night. In both cases they are obliged to respond to a subpœna, but in the former only are they *compelled* to testify. Either party to a litigation is entitled by law to the testimony of any person who can enlighten the Court and jury upon the facts of the case; but a physician's opinions, his knowledge of his profession, his skill, are his own, to be kept or imparted, at his pleasure. While, therefore, he might be compelled to come to court, and would be punished for contempt of court if he refused; he could not be compelled to give his opinions, to act as an expert, except, perhaps, in the case of the Government, which has a right to command the services of every individual owing allegiance to it. His knowledge is his own, and he parts with it upon his own terms.

The position of a medical expert, is, therefore, one of dignity. His appearance is voluntary. He speaks to science. He produces the connecting link between cause and effect—between the act of the accused and the allegations made against him. As the jury are usually ignorant of the matters to which he speaks, the physician should be a person of the highest skill and strictest integrity. His opportunities for good or injury are great. He may rescue an unfortunate

neighbor from the gallows and save his family from disgrace, or bring them all down in one common ruin. And because the jury are ignorant of the relation between the cause and the effect, and the physician is called upon to supply it, his testimony becomes important, often controlling.

It is not surprising, therefore, if he is questioned closely, too closely often to be agreeable. Indeed, many skillful physicians have refused to testify as experts in any case, preferring to forego the fee rather than submit themselves to a sharp cross-examination. An honest witness is entitled to respectful treatment at all times. But suppose he abandons his neutral position, and evinces an undue partiality for one side against the other, or suppose he is mistaken in his statement respecting the questions of science about which he testifies, shall his feelings be spared and the truth fail of vindication? Justita fiat ruat cœlum. Let the truth triumph, at whatever cost.

Properly speaking, an expert is not a witness on either side. He does not depose to the facts which form the basis of the judgment. He is not concerned with the result. When he has stated what certain facts indicate, what they mean in reference to the issue joined between the parties litigant, his office ends. The facts upon which the judgment is to be based are to be found by the jury, whose province the expert should not be allowed to invade. He is not to answer the question, Is the accused guilty or not guilty? Is he sane or insane? Those are for the jury. He is to say whether assuming certain facts to be shown, they, as a matter of science, would indicate what is necessary to meet the allegation against the accused. He might, for instance, testify that certain facts hypothetically stated indicate insanity; but the jury may say that they do not think those facts established. There is no conflict. The expert is not impeached. No reflection is cast upon him. But he does not always remember this. He sometimes acts as if he were a retained witness, a testifying advocate. He feels that he has as deep an interest in the result as the counsel who represents the same side. But their relations are widely different. The counsel presents

his side of the case, irrespective of his own private opinions. He may argue whatever legitimately grows out of the evidence. The expert is expected to give his true opinions; to state exactly what he thinks; to tell the truth, the whole truth, and nothing but the truth.

The counsel presents whatever facts can lawfully be introduced bearing upon his side of the case, leaving the other side to take care of itself. Indeed, Lord Brougham declared that a counsel might do everything in his power to gain his cause, even if the State were ruined thereby. Such an extreme doctrine has not found favor with the legal profession; but it is his duty to present whatever facts will aid his side of the cause, and it is his right to make any observations legitimately growing out of them. But such liberties in a witness are utterly inexcusable, and it becomes the duty of counsel to set him right, if he wanders so far from the sphere of his legitimate duties.

To illustrate his neutral position, let us take the case of The State *vs.* Knight, 43 Maine, p. 11. A Mrs. Knight was found dead with her throat cut from ear to ear. All the great arteries and blood vessels of the neck were severed, apparently at a single stroke. Could she have done it herself? This was a question entirely independent of the issue before the Court. If she could, and as no one saw her killed, it would be difficult so fasten the guilt upon some other person. If she could not, then who committed the act? Blood was found upon a knife which the prisoner was supposed to have used. Blood was found also upon some clothes and some shingles in possession of the accused. He said it was the blood of a sheep. If so, it was a matter of no significance against the accused But if it were human blood it formed a strong item of evidence against him A chemist examined the blood and pronounced it human blood. But this testimony was not in any proper sense against the accused. It might have been his own blood. It became necessary to connect it with the death of Mrs. Knight. That was not a question for an expert, as it involved no question of skill. All the testimony given by the experts might have been true, and yet the accused be entirely innocent. Let

him, therefore, remain neutral, if he wishes his character as a witness to be respected.

As medical experts testify to matters of science, it is for the honor of the medical profession that their testimony should be correct. Not only may ignorance and incapacity bring disastrous results in the particular case under investigation, but the whole profession thereby suffers disgrace. Indeed, in so marked a degree have these appeared in some cases, that Judges have not hesitated to tell the jury that the expert testimony was wholly unreliable, and that they need not be guided by it. It would not be difficult to raise a doubt about the sanity of any man in New York.

One safeguard is in the right of the opposing counsel to inquire into the qualifications of the person offering himself as an expert. This is not a full protection, for the Court itself does not know, or is not presumed to be skilled in any science, except that of law. He is, to a large extent, dependent upon the witness himself, respecting his qualifications. Yet it is held that, after the preliminary examination as to qualification, whether he shall be permitted to testify, is a question of law for the Court. If the Court does his duty, he will not allow a physician to testify as an expert, unless he is specially qualified, by experience, to speak upon the subject of science under consideration. Because a man is a physician, he will not be allowed to testify to everything which comes within the scope of medical science.

In Emerson *vs.* Lowell Gas Light Co., 6, Allen 148, a physician was offered to testify as to the effect of breathing burning gas. The Court heard his qualifications and rejected him. On appeal, the Court above said:

"The testimony offered as to Dr. Bass was that he was a physician, and as such had witnessed the effects of the gas which escaped from the defendant's pipes at a time when the plaintiffs allege that they were injured. The persons whom he saw lived in another house in the neighborhood. The mere fact that he was a physician would not prove that he had any knowledge of gas, without further proof as to his experience; for it is notorious that many persons prac-

tice medicine who are without learning; and a physician may have much professional learning, without being acquainted with the properties of gas or its effect on health. And the observation of a man who is at the time inexpert is of no value, and does not qualify him to give opinions. The Court are of opinion that the testimony of Dr. Bass was rightly excluded."

The Court in the same case held that "one who is an expert may not only give opinions, but may state general facts which are the result of scientific knowledge or professional skill."

In the Commonwealth *vs.* Rich, 14, Gray 333, Jacob Mitchell, a witness, called on behalf of the defendant, testified that he had been in practice about thirty years as a physician, that he had made the subject of mental disease a study, but not a special study; that he had considered the matter only so far, in his general practice, as to determine whether a patient was in such a condition of mind as to require treatment for insanity, and if he was, he had been accustomed to call in the services of a physician who had made the subject of insanity a special study, and had experience in the treatment of mental disease. The Court refused to allow the witness to be interrogated as to the question of sanity or insanity upon a hypothetical case stated as arising out of the testimony. He had not had sufficient experience to qualify him as an expert in cases of mental disease.

In Caleb (a slave) *vs.* The State, 39 Mississippi, Rep. 732, a witness who made no pretensions to any knowledge of medicine or surgery was allowed on the trial to state his opinion as to the character of the wounds received by the deceased. He said that "he had frequently seen gun-shot wounds and wounds made with a knife on the body of men," describing each; but the Court above held that it was error to permit him to testify.

Hence it appears that he who would testify as an expert should be peculiarly fitted for the work of giving opinions on the subject, and have more than ordinary knowledge on the subject. No precise limits can be set. For as science is constantly progressing, the extraordinary knowledge of

to-day becomes the ordinary knowledge of to-morrow. A few advanced spirits make discoveries which soon become the common property of the world. The standard of the expert must change with the progress of his science. But as all sciences have proceeded to such great length, it is obvious that any one who would extend his knowledge beyond these limits must be content with a narrower range. And hence the sphere of the expert in any one science is proportionably narrowed. The tendency is to specialties. No one physician expects to master all branches of his profession, and hence no one physician can expect to act as an expert in every class of cases which come under the cognizance of members of his profession.

In Fairchild *vs.* Bascomb, 35 Vermont Reports, 409, the Court said :

The mere fact that a person was, by education, a physician, if he had not practiced his profession, we should not deem sufficient to justify his admission as an expert. So, if he devoted himself exclusively to one branch of his profession, and had no practical experience in the subject matter to which he was called to testify—as if an oculist was called to testify about insanity—we should not deem him admissible. See also Bowman *vs.* Woods, 1 Iowa, 441; Corsi *vs.* Maretzek, 4 E. D. Smith, 1.

While the Court can inquire somewhat into the extent of the knowledge and experience of the witness offering himself as an expert, it cannot discriminate between the various schools of medicine. The reason is obvious. The Court is not informed on the subject. The Court is not presumed to know anything about medicine or surgery. Therefore when a medical witness offers himself, and declares his ability to testify, and shows that he has had the requisite experience, the Court cannot reject him. He must be allowed to give his opinion. His knowledge can be tested on a cross-examination, and in all cases he must state the facts upon which his opinions are based. This is indispensable. The reason of it is obvious. He is endeavoring to enlighten the jury upon a question of science. He is stating his opinion of what? If it is not of something similar to the case under con-

sideration, the opinion will be of but little service to the jury. He therefore states the facts upon which his opinion is based, and the jury compare this state of facts with the facts which they think have been proved, and form their conclusions accordingly.

The reasons for this rule are well stated by Campbell, J., in White *vs.* Bailey, 10 Michigan Reports, 159, as follows: "First, it is necessary, in order to enable other experts to determine whether the opinions expressed by the witness are correct, and to enable the parties to contradict them if wrong. Second, it is necessary, in order that if an opinion is given on a mistaken or perverted statement of facts, the truth may be elicited from others to destroy the foundation of the conclusions. And a third reason might be mentioned, which is that the Court and the jury may know, from his opportunities, what means the witness had of forming any opinion at all. These are rudimentary principles, which cannot be safely departed from."

So necessary was the stating the facts upon which the opinion was based regarded in Dewey *vs.* Warfield, 7 Maryland, 73, that a judgment obtained through a disregard of this rule was reversed. It was a contested will case. Subscribing witnesses and others were allowed to testify without showing proper qualifications. On appeal, the Court said:

"We do not deem it essential to set out in detail the testimony of each witness. It is sufficient to say that among those examined on the part of the caveators, there were no professional characters—that is, physicians—and that nearly all of them gave their opinion of his mental capacity without assigning the facts from which that opinion was deduced. In regard to these opinions, unsupported by circumstances, there can be no doubt they were wholly inadmissible, as they did not come from professional experts."

It follows from this that professional books are not competent evidence. They are treatises upon certain subjects, stating general principles, but having no relation to the particular case under consideration. The jury want

an explanation of that case. Professional books cannot give it. A witness may, however, refer to such books, as containing the generally accepted opinions of the profession, and as sustaining him generally, but cannot read them as part of his evidence. The author was not under oath. He cannot be cross-examined and his knowledge tested. The books do not contain a statement of the facts upon which his opinion was formed. The witness on a trial gives an opinion upon facts as they are claimed to be proved. In some way he must get a knowledge of those facts. Books deal with general propositions, not with particular cases. Each case needs its own interpreter.

Medical witnesses cannot be asked questions, as experts which can be answered equally well by other persons. If the jury can know the answer as well as he, the witness is not needed. Hence, whatever lies within the range of men's general knowledge is not the subject for an expert.

In Woodin *vs.* The People, the defendant's counsel asked the physician the following questions: "From what you know of Mrs. Woodin's health and strength, in your opinion could the defendant have carnal connection with her against her will, without resorting to other means than the exercise of his ordinary physical powers? From what you know of Mrs. Woodin's health and strength, in your opinion could a man have carnal connection with her against her will, without resort to violence beyond the exercise of his ordinary physical powers?"

"To each of these questions the counsel for the people objected. The objections were sustained, and the defendant's counsel excepted. The evidence of the opinion of the witness was clearly inadmissible. It did not involve medical skill or science, nor was it a case for an expert. The jury could judge equally well with the witness, after they were in possession of the facts upon which he must necessarily base his opinion. See, also, Van Zandt *vs.* Mutual Benefit Life Insurance Co., 55 N. Y., 169; Kennedy *vs.* The People, 39 N. Y., 255."

Nor can the medical witness give his opinion directly upon the issue presented by the case. This is the province

of the jury; they alone determine the facts. He may explain facts, but he cannot find them; they must be found for him or assumed by him. A witness may not be asked whether the accused was sane or insane at the time when he is alleged to have committed the crime, if there be a conflict as to the facts. He may not be asked whether a testator had capacity to make a will. But a hypothetical case may be put to him, and his opinion asked thereon. The jury will see how far it it corresponds with the case in hand, and therefore, how far their judgment shall be guided by it.

In Wendell *vs.* The Mayor of Troy, 39 Barb., 338, Mr. Justice Hogeboom said:

"The medical testimony as to the injuries likely to be produced under a given state of facts was, I think properly admitted. The witness stated the precise facts on which he based his opinions, and the Court did not withdraw from the jury the right or liberty to consider whether these facts were established by the testimony." People *vs.* Lake, 12 N. Y., 358; Goodrich *vs.* The People, 3 Park, 622.

In White *vs.* Bailey, 10 Michigan, 159, the witness, a doctor after stating that he had attended the deceased professionally for some nine or ten years previous to his decease, but who had not seen him for two or three months, was asked this question:

"From what you saw, what was his (Mudge's) mental capacity?" Question excluded. On appeal, the Court said:

"The question, we think, was properly excluded. It asked for the doctor's opinion of the mental capacity of the testator some two or three months before he made his will. Mental capacity for what? To make a will? For that was the issue. This is the question of law, and not of medical science. It is for the jury, under the instructions of the Court as to what is sufficient mental capacity to make a will, to decide on its existence or non-existence when the will was executed, from the facts testified to by the witnesses, and not from the witness' opinion regarding such facts. The jury, and not the witness, are to draw the conclusion from the facts stated by the witness. The opinion of a physician

as to the existence of disease, or a particular malady, and its effect upon the mind, would be evidence. But a physician's opinion regarding mental capacity generally, or the mental capacity necessary to make a will, is, in the eye of the law, no better than that of any other person."

In Shelton *vs.* The State, 34 Texas, 666, in which a father was indicted for the murder of his child, a medical witness was allowed to testify as to the cause of death of the child, and also whether the neck of the child was broken before or after death. The Court said: "The opinion of a medical man, as to the cause of death of the child, and also as to whether the neck of the child was broken before or after death, was properly admitted by the Court to go to the jury. Indeed, there are many cases, as in this, where there was no one present at the death but the deceased, unless it was the defendant, and where it might be wholly impossible to proves the cause and manner of death excepting through the aid of science, when, with the aid of the scientific experience of medical men, the whole facts might become as manifest a though rehearsed by an eye-witness." The prisoner was convicted; but a new trial was granted, because the Court could not see a sufficient intent to kill to make the crime murder in the first degree. This case illustrates the importance, as well as the nature, of medical testimody.

In Woodbury *vs.* Obear, 7 Gray, 469, a medical witness was asked this question: "Suppose all the facts stated by the several witnesses to be true, was Mr. Woodbury laboring under an insane delusion, or was he of an unsound mind?' Ruled out. On appeal, Shaw, C. J., said:

"We think the question put to Dr. Williams, as an expert, asking his opinion whether, having heard the evidence, he was or was not of opinion that the testator was of sound mind, was not admissible in that form. This would be especially irregular where the evidence is conflicting, because it puts it in the power of the expert to give an opinion upon the credibility of the testimony and truth of the facts, which is purely a question for the jury. And then upon the value and efficacy of the facts and circumstances in his opinion thus proved upon the question of the soundness

of mind. We think the question as modified by the Court and then admitted was correct, to put the case hypothetically, as thus: If certain facts assumed by the questions to be established by the evidence should be found true by the jury, what would be his opinion upon the facts thus found true, or the question of unsoundness of mind? If, however, the physician has attended the accused, and had frequent opportunities to witness his conduct and converse with him, then he can give an opinion as to his sanity or insanity based upon such observations; and after an opinion has been given, a cross-examination will be allowed upon hypothetical questions predicable of the facts then proved in the case, in order to test the correctness of the opinions of the witness." People *vs.* Lake, 12 N. Y., 358.

From what has been said, it is obvious that, in order to be an expert in the true sense of the word, the witness must have had experience in the particular science under investigation. Mere opportunities for observation are not sufficient. He may not have improved the opportunities. He may have considered the profits which should arise from dealing in certain articles, rather than their scientific value.

In Page *vs.* Parker, 40 N. H., Rep., 59, a witness was offered to give his opinion as to the quality of soap-stone in the quarry in controversy. He was shown to have been more or less engaged for forty years in quarrying soap-stone; that he had manufactured soap-stone into pipe for aqueducts more or less for twenty years, and had visited other quarries. But it did not appear that he had ever devoted any time or study to an investigation of the composition and characteristics of soap-stone, or made any particular observations on that subject, so as to be better qualified to give an opinion on the scientific question propounded to him than any member of the jury. Held incompetent. The Court, after stating in what cases winesses are allowed to give their opinions, adds: "It must, however, be shown that they are skilled or scientific men, or at least, that they have superior *actual* skill or scientific knowledge in relation to the question, before their opinions can be competent.

Mere opportunity for observation is not sufficient." 1 Phil. on Ev. 788, Chap. 10, Sec. 40, and Notes.

We have thus seen what are the qualifications of medical witnesses and what is the sphere of their duties. It would almost seem as if their testimony should produce more satisfactory results, and yet within the last ten years trials have taken place in this and neighboring States in which the medical witnesses did more harm than good—did more to mislead the jury than to instruct them. I need not speak of Schoeppe' scase, the Wharton case, and others a little nearer home. They are all familiar to you. But why does this kind of evidence so frequently bring about unsatisfactory results? We have mentioned incidentally two causes, viz : incapacity and partiality of witnesses—some know no better, and some did not wish to know better. But there are cases wherein skilful and well-meaning men fail to meet the demands of the case. It is not because they do not understand the general subject under consideration, not because they are unwilling to do their duty, but because they fail to comprehend the demands of the case upon them, and to apply correctly the knowledge which they possess. This most frequently happens in cases of insanity. Let me illustrate my meaning by a case. A prisoner is charged with the crime of murder. It is proved that he committed the act which resulted in the death of his victim, and the circumstances attending the case are such that a jury would infer the intent to kill. He has no refuge except in the plea of insanity. The history of his life is told. All his queer expressions and actions are detailed to the jury, who are asked to acquit the prisoner. A hypothetical case containing the facts which are considered proved in the case is put to the medical witness, and he is asked whether, assuming these facts to be true, he thinks such a person to be insane. What does the law mean by that question? Listen to the charge of the late Benjamin R. Curtis, Justice, in the case of U. S. *vs.* McGlue, 1 Curtis, Reports, 1. The question there was whether the prisoner had committed the act in a state of drunkenness merely, in which case he would be responsible, or whether he was suffering from *delirium tremens*, in which

case he would be irresponsible. The learned Judge said:

"The next inquiry is, What is meant by insanity? What is it which exempts from punishment because its existence is inconsistent with a criminal intent? Clearly it is not every kind and degree of insanity which is sufficient. There have been, and probably always are, in the world, instances of men of great general ability, filling, with credit and usefulness, eminent positions, and sustaining through life, with high honor, the most important civil and social relations, who were, upon some one topic or subject, unquestionably insane. There have been, and undoubtedly always are, in the world, many men whose minds are such, that the conclusions of their reason, and the results of their judgments, tested by those of men in general, would be far astray from right. There are many men whose passions are so strong, and whose conscience and reason and judgment are so weak or so perverted, that not only particular acts, but the whole course of their lives, may, in some sense, be denominated insane. And there are combinations of these, or some of these deficiencies, or disorders, or perversions, or weaknesses, or diseases. They are an important, as well as a deeply interesting study, and they find their place in that science which ministers to diseases of the mind, and which, in recent times, has done so much to alleviate and remove some of the deepest distresses of humanity. But the law is not a medical or a metaphysical science. Its search is after those practical rules which may be administered without inhumanity for the security of civil society, by protecting it from crime. And, therefore, it inquires not into the peculiar constitution of mind of the accused, or what weaknesses, or even disorders, he was afflicted with, but solely whether he was capable of having, and did have, a criminal intent. If he had, it punishes him; if not, it holds him dispunishable—and it applies a test by which the jury is to ascertain whether the accused be so far insane as to be irresponsible. That test is the capacity to distinguish between right and wrong as to the particular act with which the accused is charged. If he understands the nature of his act; if he knows his act is criminal, and that if he does it he will do

wrong and deserve punishment, then, in the judgment of the law, he has a criminal intent, and is not so far insane as to be exempt from responsibility. On the other hand, if he is under such delusion as not to understand the nature of his act; or if he has not sufficient memory and reason and judgment to know that he is doing wrong, or not sufficient conscience to discern that his act is criminal and deserving punishment, then he is not responsible." Flanagan *vs.* The People, 417. Capacity to distinguish rejected.

This is the question for the jury to decide; but the jury are not presumed to know enough about insanity to judge correctly in reference to it. They do not understand the evidence. They cannot comprehend its scientific bearings. The aid of medical witness is invoked. He is expected to tell them what? What his notion of insanity is? No. He may be one of those people who believe everybody is more or less insane; that as there are no perfectly sound bodies, but all contain within them the seeds of disease and death, so there are no sound minds. Or he may think that the legal test is not a sound one, and wishes to adopt one more scientifically correct, as he thinks. No; he is expected to use the word insane as the law uses it, and in the same sense. When, therefore, a hypothetical case, fitting as nearly as possible, the case at the bar, is put to him, and he is asked whether the facts, if proved true, indicate insanity, the law means that he shall answer whether the prisoner is insane, in the sense indicated by the charge which I have read. Is insane in the sense that he has not "the capacity to distinguish between right and wrong, as to the particular act with which the accused is charged?" If yes, the witness is bound to say so, and thus aid in acquitting the prisoner. But if he is not insane in the sense above expressed, no matter what the witness thinks of him in other respects, he is bound to say, upon the case put, that he does not regard the prisoner as insane.

The witness has no right to use the word in any other sense. His duty is to aid the jury in ascertaining the fact whether he is insane in that sense, and in no other. If he does not use the word in the same sense, he misleads the

jury and causes them to err. Just here has been the mistake which medical witnesses have so frequently made; and after the prisoner has been acquitted, have been astonished at their own acts. And then they talk of the "criminal insane" and "insane criminal." If the medical witnesses would appreciate exactly the question which they were called upon to answer, and answer it honestly and conscientiously, much of the confusion which hangs about this subject would be removed. They would not startle at their own conclusions, or aid in securing results which shock the common sense. Let them, before they testify, inquire what the law demands of them, and strive to meet the law's requirements; and not palm off on the Court and jury what Maudsley thinks, or Ray thinks, or, perhaps, what the witness thinks insanity ought to be.

But some physicians, we have often heard it said here, urge that in their judgment the legal test of insanity is not scientifically correct, and they cannot adopt it—that they have a better test of their own. If they are unwilling to do what the law requires, they have an alternative—they need not testify at all. They will not be compelled to give their opinions. The Court does not want their peculiar notion. If the test is not correct, apply to the Legislature to have it changed. But adopting another test is not changing—it is defeating the law. What would you think of counsel, who, disapproving of a law, should advise his clients not according to the law as it is, but as he thought it ought to be? And in case of mishap, of what avail would such an excuse be? And yet that is the position of the medical witness, whose evidence is guided by his own opinion of what insanity ought to be, instead of adopting the test which the law has prescribed.

From these illustrations and authorities it will appear that the office of medical expert is one of dignity and importance, for it relates to questions of medical science and skill. He should be among the best and wisest of his profession. He is sole master of the peculiar field allotted to him, for no other witness in the case can give opinions, and the judge and jury are presumed to be ignorant of the sub-

jects on which he speaks. They must depend upon him for guidance. If, therefore, he is competent and candid enough to express correct opinions, and conscientiously guides the jury to correct conclusions, he may be vastly serviceable in the administration of justice. But if expert testimony is not to become a synonym for useless testimony, more care must be exercised on the part of some of those persons who offer themselves as interpreters of evidence. They must be interpreters indeed. They must have their opinions first hand. They must, in short, be what they profess to be—skilled witnesses—skilled by experience.

Report of Committee on Intoxicating Liquors.*

The Committee on Intoxications, etc., report as follows:

I. As to the adulteration of liquors with noxious ingredients, the Committee find that there are diverse opinions in regard to the extent of this practice. Some persons claim that distilled liquors, such as brandy, gin, etc., used in this State, are not adulterated to any serious extent, because such adulteration would not pay; that by the process now in use of manufacturing these liquors, no foreign injurious substance enters into the product; that the basis of all these liquors is what manufacturers call "high wine;" in other words, common alcohol, which is obtined from Indian corn by a simple and cheap process of distillation, and that this is then reduced, colored, and flavored to resemble brandy, gin, rum, or whiskey, and sold as such; that the ingredients used to color and flavor these liquors and make them assume the appearance and taste of genuine cognac, gin, etc., are harmless, being such as molasses, burnt sugar, butyric ether, pine-apple ether, etc.; and that the worst which can be said against these adulterations is that they practise a harmless fraud upon the imbiber, while after all the worst thing in these liquors is the alcohol itself.

Others maintain that much of the beverage which is sold for gin, whiskey, etc., is vile stuff, containing an excess of fusil oil, and flavored and colored with noxious materials, which poison the body and destroy the mind. The truth no doubt lies between these extremes.

But in regard to wines, beers, etc, and liquors not made in this country, their seems to be no question that injurious adulterations exist to a large extent. Lager beer, which has

* Made January 14, 1878.

become almost a national drink, and whose consumption has happily buguiled many from indulging in stronger beverage, and has therefore worked in the direction of temperance, is now largely adulterated with mixtures that are entailing upon their victims Bright's disease of the kidneys, destruction to the linings of the stomach, etc. Surely so long as persons will drink artificial beverage, be it tea, coffee, lager beer, or what not, it is the duty of the State to recognize that fact and institute safeguards to prevent the admixture therewith of poisons or noxious ingredients which form no part of the beverage in its purity. It is in this sense that the Committee have embodied the accompanying recommendations.

II. The Committee have not taken sides in the struggle which is now raging over the Excise law. But they believe that some modification should be made in that law in respect to light wines—wines containing but a small percentage of alcohol. As the law now stands, persons who are accustomed, say to claret wine for dinner, if they should have occasion or be compelled to dine at a restaurant or eating-house, not an inn, tavern, or hotel, would be denied their favorite beverage. The law, to be efficient, needs not expel these wines from such places.

The Committee therefore make the annexed suggestion in regard to light wines:

We would recommend the Legislature:

I. To adopt a standard of purity for all fermented and distilled liquors

II. To pass an act against adulteration of all such liquors, making it an offence, with suitable penalties, for any person to adulterate with poisonous or deleterious drugs or mixtures any such liquors intended for beverage; or to bring into the State for sale, or sell, or give away; or to order, or permit to be brought into the State, to be sold or given away, any such liquors intended as a beverage, knowing or being able to know, with reasonable diligence, that the same are so adulterated.

III. To provide for the appointment by the Governor, in each of the eight judicial districts, of a person possessing

competent knowledge, skill, and experience as an analytical chemist, to inspect and analyze all such liquors as may be brought to him for that purpose, and make a report thereon. He to make in each case, under oath, a true and faithful analysis, and report of the results thereof over his signature; giving in detail the ingredients of the composition. Such report and certificate to be, in the absence of other evidence to the contrary, *prima facie* proof of the matters therein contained in any action or proceeding before a court or magistrate. He to make quarterly reports to the Governor, stating the number of analyses he made during the next preceding quarter, and specifying the results of each analysis, and naming the sum therefor, if any. These quarterly reports, or copies thereof, to be annually transmitted to the Legislature by the Governor.

The analytical chemist should be removable by the Governor for cause, and should receive a fixed salary.

IV. The act should provide that the mayors and aldermen of cities, and sheriffs of counties, the supervisors of cities and towns, health officers, and the members of Boards of Health of cities and villages, and police officers and constables, especially authorized thereto, shall have the right to enter at any time, in their respective counties, cities, towns, and villages, upon premises where any liquor is manufactured, or sold to be drunk, to ascertain the manner in which the manufacturer or vender thereof conducts his business, and to preserve order; and shall have the right to take samples for analysis from any liquor made or kept for sale on such premises upon giving a receipt therefor; and the vessel or vessels into which such samples are put shall be sealed on the premises with the seal of the manufacturer, or vender, or his agent, or otherwise securely fastened up until submitted to the proper analytical chemist for analysis. The samples to be so submitted within —— days thereafter, and the chemist without delay to proceed to analyze the same and make his report. His certificate of analysis to be delivered to the person by or in whose behalf the sample was submitted for analysis, and legal proceedings may then be instituted upon such certificate within —— days thereafter.

Every such manufacturer, or vender, or agent who shall refuse such samples to any person authorized by or under this act to demand and receive the same, shall be liable to a penalty of $——. The city, county, town, or village, where the premises are located to pay for the samples so taken, provided such liquor be found, on analysis, to be of good quality and free from adulteration.

V. Any person should have the right to purchase a sample or samples of such liquors, at the customary price, on the premises where the same are publicly kept for sale, and have the same analyzed by the chemist of the district where the liquor is offered for sale, on paying him therefor not exceeding $3.00 for each analysis, and receive from him a certificate of the results as above provided, upon which certificate legal proceedings may be instituted. The purchaser, on completing the purchase, should forthwith notify the vender, or his agent selling the article, of his intention to have the same analyzed as aforesaid, and offer then and there to divide the article into two parts, each to be marked and sealed with the seal of the vender or his agent, or otherwise securely fastened up; and shall, if so required, proceed accordingly (otherwise he need not), and deliver one part to the vender or his said agent, and notify him of the time and place when and where the other part of such sample or samples will be submitted to the analytical chemist for analysis; and he shall so submit the same, if he deem proper, to such chemist, who shall divide each into two parts, and seal or otherwise securely fasten up one part and deliver the same to the purchaser on receipt of the sample, or on delivering to him the certificate of the analysis, which part the purchaser shall retain, to be produced in case of any legal proceedings, and the other part shall be analyzed. The certificate given upon such analysis shall be sufficient presumptive evidence of the facts therein contained, unless the defendant requires the chemist to be called, and the part of the article retained by the purchaser to be produced.

VI. The District Attorneys of the several counties, the Boards of Health of cities and villages, or the person causing the analysis to be made, may institute proceedings for a vio-

lation of this act before any magistrate or tribunal having jurisdiction of violations of the Excise law; provided, however, if a purchaser institutes such proceedings and fails in the prosecution, he may be adjudged to pay the costs, if it appear that he did not act in good faith. Further provided, that no person shall be liable to be convicted, but shall be discharged, if he shows to the satisfaction of the magistrate or tribunal before whom he is charged that he did not know that the article sold by him was adulterated, and could not with reasonable diligence have obtained that knowledge; but he shall nevertheless pay the costs of the prosecution, unless he duly notifies the prosecutor that he will admit at the hearing of matters charged against him in the information and stand upon the above defence.

VII. Husband and wife, in case either is accused under this act, shall be competent witnesses for and against each other in a prosecution under this act.

VIII. The magistrate or tribunal before whom a prosecution for adulteration of liquors is pending may, upon the request of either party, direct the chemist of the district to make the analysis of the article complained of, and give a certificate to the court of the results of the analysis, and the expense of the same shall be paid by the one or the other party, as the court may direct.

IX. Upon conviction of any violation of this act the license of the offender shall be forfeited, and no other shall be issued to him for the period of one year, and the adulterated liquor shall be confiscated and destroyed.

X. The fines imposed and received under this act to be appropriated toward the expenses of executing the same; the remainder, if any, to go to the proper authorities for the benefit of the poor.

XI. Every person who shall forge, or shall utter knowing it to be forged, for the purpose of this act, any certificate of a chemist appointed under the foregoing provisions, shall be guilty of a misdemeanor, punishable as such; and every person who shall wilfully apply to any article of liquor, in any proceeding under this act, a certificate given in relation to any other article, shall be guilty of an offence and liable to a penalty of $—— fine.

XII. No manufacturer or vender of liquors to post or publish, or order or permit to be posted or published, any certificate, or writing purporting to be a certificate, of a chemist appointed under this act, under a penalty of $——

XIII. Every manufacturer and importer of liquor to be used for beverage shall deliver for analysis to the analytical chemist of the district where the same is made or offered for sale a true sample, under oath, of each given quantity so made or offered for sale; such sample to be taken and delivered after the quantity to which it relates is ready for sale, and before any part thereof is sold or delivered. The affidavit to be to the effect that the sample so delivered is a true sample of the whole of such quantity, and that the same was taken after the liquor to which it relates was ready for sale, and before any thereof was sold.

Every person making a false affidavit in this behalf to be liable to the same penalties as if such affidavit had been made in a judicial proceeding.

XIV. Wines containing not exceeding fifteen per cent. of their volume of alcohol to be deemed light wines; and they should be classed with ales, beer, cider, etc., for the purpose of granting license under the Excise law, or provision should be made for granting special licenses to persons other than to keepers of inns, taverns, and hotels to sell such wines under proper restrictions.

All which is respectfully submitted.

[Signed] D. S. Riddle.
Jacob F. Miller.
William G. Davies.
Ed. C. Harwood, M. D.
E. C. Spitzka.

Dated *New York, February 6th* 1878.

The Mode of Inflicting The Death Penalty.

By JOHN H. PACKARD, M. D., of Philadelphia.*

Much as Christianity and modern civilization have done for human nature, they have not so far refined and purified it as to warrant the abolition of the death penalty for the crime of murder. At least such seems to be the plain inference from the current history of our time. Without dwelling upon the daily reports of violence and ruffianism, certainly not growing less numerous or milder in form, I would mention the fact that a London telegram, of March 14th, says that a bill to abolish capital punishment was, on that day, put on its second reading, in the British House of Commons, and defeated by a vote of 263 to 64.

Another item, within a day or two, was to the effect that the death penalty was to be restored to the statute books of the State of Iowa, the experiment of dispensing with it having proved a failure.

I am well aware that much has been and may be said on what seems to be the humanitarian side of this question, which, indeed, is too large to be entered upon here, even if it came within the purpose of the present paper, or if I felt myself capable of handling it. Let me, however, venture to call attention to the fact that in the Mosaic history the

* Read before the New York Medico-Legal Society, April 3d, 1878.

Divine edict, "Who so sheddeth man's blood, by man shall his blood be shed," was given as a distinct and separate utterance, anterior to any system of temporary or ceremonial law, and without any hint of limitation by time, or by circumstances which might arise in the later history of the race.†

As matter of fact, in almost all civilized communities, it ordained that the deliberate taking of human life shall involve the forfeiture of the life of the offender; the object being to prevent crime by the fear of punishment.

But there are two entirely different standpoints from which to view this matter. One is that taken by the degraded ruffian, who looks upon law and order as oppressive shackles, to be resisted whenever there is a chance of doing so successfully,—who regards his being as a sort of struggle with society,—and if in this warfare he is brought to the gallows, accepts his defeat as he would the loss of a prize fight. He is overpowered by superior odds, but not conquered; and if he "dies game" he is a hero in the estimation of his compeers. The other is the point taken by the moral and self-respecting part of the community; in this point of view the punishment is in the condemnation—in the ignominy of forfeiture of the right to live.

These two points, although thus stated separately, are extremes, between which there are various grades; and the phrase, "the fear of punishment," expresses the combination of the two, which operates to preserve the security of life in communities.

Of course the mere terror of physical death is combined with the double aspect of capital punishment just mentioned to a greater or less degree, in very many minds. In some it would swallow up all considerations of defiance of society, of disgrace, or of distress to relatives, etc. But this is an element which is not, and cannot be, recognized in any legal view of the matter. If it were not so—if the pain of physical

† A recent number of an English periodical (I regret that its name has escaped my memory, and that I have failed to find it by such search as my time has permitted) contained a very forcible *résumé* of the existing reasons for the retention of the death penalty.

death has anything to do with the deterrent effect of capital punishment—then it would be better to restore all the fearful list of tortures, burning, breaking on the wheel, and the rest.

I think it may be stated positively, without fear of contradiction, that just so far as the physical terrors of execution are enhanced, the moral force of the procedure is weakened. This is true in regard to its effect upon even the lowest and most brutal classes of society. It is the calm, dispassionate, inexorable working of retributive justice which holds them in check, so far as fear of punishment can do so.

The subject of the modes of carrying out the extreme sentence of the law was brought before this Society some years ago by Dr. Alonzo Calkins, in an able paper entitled "Judicial Executions for Capital Crimes." The ground taken by him was adverse to the mode now in use in this country and in Great Britian; and his forcible exposition of its objectionable features, leaves nothing for me to say in regard to this portion of the topic. His views must be shared by all in whom the finer sentiments of humanity have not been blunted by actual contact with cruelty and vice.

While, however, I have nothing to say as to the mere process of death by hanging, there are some matters connected with it to which I would allude.

The strong feeling which exists in many minds against this mode of judicial death often adds to the difficulty of procuring convictions, even upon very positive evidences of guilt. It also adds very much to the force of the sympathy which is apt to be developed for criminals under sentence, and increases the frequency of pardons, by which the salutary effect of the law is seriously lessened. Under this head may be mentioned the facilitating of the abuse of the pardoning power, for political or private reasons, since this would be less likely to occur if it did not fall in with public sentiment.

(There is a curious usage in the State of Pennsylvania, and perhaps in other States also, by which, if the Governor in whose term a convicted murderer is sentenced goes out of office without signing the death warrant, his successors likewise abstain from doing so. A man was recently liberated

who was sentenced twenty-six years ago, but the sentence was never carried out for the reason just stated. So far as I can learn, it is a mere usage, without any sanction by legal enactment.)

Between hanging and other modes of execution at present in use in civilized countries, there is really no choice. They are all alike in affording an opportunity for bravado on the part of the criminal, and in the appearance, at least, of unseemly violence on the part of the officers of the law.

The ignominy of death on the gallows has always been regarded as one of its chief terrors; yet the body only is affected by it, and the stigma is merely conventional. Popular clamor or partisan hatred may condemn a pure-minded patriot to this, so-called, shameful ending, and yet succeeding generations will only the more honor and cherish his memory. The infamy comes from the judicial character of the act, from the fact that the man himself, by reason of his crimes, is declared by his fellow-men to be unworthy of existence among them.

Some of our State Legislatures have followed the example of the British Government in ordaining that all executions shall be carried out in private; but in many parts of the country the spectacle of a "hanging" is still allowed to have its brutalizing effect upon all who choose to come to see it.

Within forty-eight hours of the time of writing these lines the telegraph informs us of the hanging of a colored man, for murder, in a town of Tennessee, which was witnessed by ten thousand persons. And in the newspapers of this morning occurs the following items:

"Gus Johnson was hanged at Atlanta, Ga., yesterday, in the presence of a large crowd, for the murder of a colored ferryman. He showed brutal indifference, confessed that he had committed four murders, and ascended the scaffold with a cigar in his mouth."

I make no comment upon these two statements, except to record my solemn belief that the mere reading of those few lines which constitute the second one has already sown the seed of evil in the minds of thousands of the young and half educated, all over this country, which will come up with the rest in the great crop of crime.

But even where executions are supposed to be private, they are so only in name. They are, indeed, carried on *within* the walls of a prison; but a great many persons manage to get admission as deputy sheriffs, or on some other pretence, and at every such scene the reporters of the daily press are present in force, as if by right, to vie with each other in giving graphic and—to use the detestable word of the day—"sensational" accounts of the miserable affair. By their agency the public, young and old, far and near, are enabled to gloat over details which cannot but be loathsome to the better part of human nature; which have a fearful fascination for the young and inexperienced, and which unquestionably have been widely influential in promoting crime.

I appeal to all to whom these words may come, whether they are not conscious of the harmful effects of such reading upon themselves?

Now, in view of the general admission that the present mode of inflicting the extreme penalty of the law is objectionable, an apology can hardly be needed for an attempt to point out a better way.

What I would suggest is that there should be fitted up, in the jail, a small room, which can be made air-tight. By means of very simple arrangements carbonic oxide can be substituted for the air of the room, and a person confined in it would thus die the easiest and quickest death known to science. He would simply cease to exist.

A jury should be appointed to identify the convicted person. In their presence he should be conducted to the room, and placed in it, entering by a sliding door—of plate glass it may be—protected by netting of iron wire. The process of rendering the air irrespirable should then be begun, and would very soon be completed. In less than ten minutes fresh air might be introduced by opening the sliding-door and reversing the former process; and the same jury, again indentifying the body, could certify to the fact of the execution having been duly carried out.

In 1874 Mr. Coleman Sellers suggested the adoption of this carbonic oxide poisoning as the method of killing the dogs taken up in the City of Philadelphia, and unredeemed;

and it has been found to answer the purpose perfectly. By the kindness of Mr. Marett, the Superintendent of the Dog-shelter, I have inspected the process more than once. At my last visit I carefully timed its duration, and found that of forty-three dogs of various sizes intoduced into the room, the air being pure, every one had ceased to breathe three minutes after the gas began to flow. Two dogs, weighing about 45 pounds each, were put in singly, and the time was exactly the same for both—110 seconds.

More exact details of the method can readily be furnished, if desired. It is essentially the same as that within a few years so often adopted by suicides in France. To my own mind it presents many anvantages on the score of humanity, propriety, and efficiency.

Dogs killed in this way manifest scarcely any evidence of suffering—not more than I have seen in inducing anæsthesia by ether, in other dogs, for the purpose of surgical operations.

The death would necessarily be private. Probably there would be little, if any, struggling to be witnessed.

As to the certainty of the extinction of life, there can be no question, for reasons known to every tyro in physiology.

Between the sickly sentimentality which would spare merciless murderers, and the brutal ferocity which would exult over their dying agonies, there seems to be a just and wise medium, where the law can take its stand, vindicating itself, protecting society, and yet inflicting no needless torture on the unhappy criminal.

The subject is one which well merits earnest thought, and my only excuse for persuming to deal with it is the duty which lies on every man to contribute his mite to the subduing of the evil that is in the world.

THE RELATION OF LAW AND MEDICINE TO ONE ANOTHER AND TO THE PUBLIC.

By Cephas Brainard, Esq.

Proceedings of the New York Medico-Legal Society, Dec. 5th, 1877. Hon. Geo. H. Yeaman, President, in the Chair.

Two learned professions meet with common objects—the two professions whose daily service comes most nearly home to the business and bosoms of all men in the routine of common life. Surely the object of this association of the two professions is not solely the simple but comparatively selfish one of acquiring a given quantum of knowledge, as the miser accumulates gold. Rather this is a branch or section of the great, the Universal Social Science Association of civilized lands, composed of the members of the two great and learned professions, whose lines of labor most frequently touch each other as regularly pursued. Its past discussions show it to be an advocate of what is sometimes called a Social Science policy. This is well defined in one of the most remarkable of recent books—the letters and other writings of Edward Denison, M. P. He says (p. 206): "It aims at utilizing, for the purposes of imperial, national, municipal, and individual life, the great stores of knowledge in every department of philosophy and science, which the mental activity of the last half century has created and accumulated, but which have not yet been employed to diminish the suffering and increase the happiness of humanity at large." To this end how advantageous is the calm and dispassionate comparison of views between the two professions meeting in this society. How essential their substantial agreement upon topics common to both, before the great stores of knowledge adverted to by Mr. Denison are really employed to diminish suffering and increase happiness. To be most usefully employed there must be an incorporation of the results of these accumulations in legislative action and in the common

practices of mankind. The largest possible circulation of the topical papers read here contributes powerfully and directly to the latter result; but only mediately, and I think inconsiderably, to the former. So far as my examination has extended very little has been done or said here looking to practical legislation. Not that I design to suggest that the society engage in the business of procuring legislation generally, though no reason has occurred to me why, within reasonable limits, it might not properly do so.

The time seems peculiarly favourable for obtaining definite legislative action, guaranteeing these reforms in the law which the great advances in practical knowledge show to be desirable.

The limitations which some believed were set upon legislation, and which hedged about supposed rights, are yielding to the needs of the time. This change in judicial view and rule began some years since, but has recently become a settled principle of judicial action. Perhaps the strongest early manifestation appeared in the police cases as long ago as 1857 (*People vs. Draper*, 15 *N. Y. R*, 532), when our police were placed upon a better and more efficient footing.

It appeared again in 1865, when an attempt was made to overthrow the law which gives to parties whose property is destroyed by mobs a right of action against the municipality where mobs hold sway (*Darlington vs. The Mayor*, 31 *N. Y. R.*, 165). All remember the strenuous opposition, founded on constitutional objections, that was made to the health legislation affecting this city (*See Metropolitan Board of Health vs. Heister* 37 *N. Y. R.* 661, *and kindred cases*). Notwithstanding this opposition we have the improved health code—cattle are no longer driven in large droves through the crowded streets, and slaughter-houses have ceased to infect, infest, and demoralize the town. The demands of the body of the people for improved modes of travel, as incorporated in legislative action, and sought to be satisfied by capitalists, under legislative permission, are no longer thwarted by claims of supposed private right. Such technical claims our courts hold are not to stand in the way of those improve-

ments which the age really requires (*Rapid Transit cases, not yet reported*). The disposition manifested by our Court of Appeals appears in the highest court of the nation. The legislative wisdom of some States provided, as was thought, for a better use of railroads in the interests of all parties. Individual right again raised constitutional ojections, and the Supreme Court in the Granger cases (94 *U. S. R.*, 113-187) recognized and sustained the right of the body of the people to some consideration in the administration of *quasi* public trusts.

Some of these decisions may yet be subjected to criticism, but they will undoubtedly all stand the test of time and trial, and they show that the current of judicial ruling in this country is contrary to the technical spirit, the over squeamish regard for supposed private right which lies at the basis of the Wynehamer case, here (3 *Kernans R.*, 278) and *Alkyns vs. Randolph* (31 *Vermont R.*, 226) in the State of Vermont, which are the very quintessence of the chronic conservatism of the past.

It is doubtless safe to assume that this is not formed as a total abstinence society; that it was not organized for the purpose of joining in any temperance crusade. An examination of your records will show, however, that a considerable proportion of the papers read here have treated of the effects of the use of alcohol upon men. A cursory examination of these papers has not disclosed to me any observations upon their use from the philanthropic stand-point, or any appeal to the class of considerations most in use among so-called reformers. The treatment has been wholly scientific or professional. The essays treat of "alcoholism," "methomania," and "dypsomania" as diseases, as forms of insanity.

Of "methomania" one of your essayists says that it "is a manifestation of brain disease; and that brain disease involves general impairment of the mental faculties, and consequently a form of insanity. Any man drunk and absent from business that he knows to be important, committing a crime in that condition, should be treated not as a criminal but as a maniac."

Another of your essayists says: "In a criminal case the

question must be carefully examined; for if the guilty party has had attacks of delerium tremens, if it is ascertained that he is a dypsomaniac, he ought to be confined in an asylum as any other insane; and no matter how well he may appear to be while confined, it is not till after a long time, probably ten years, before he can renounce spirits, or that he may be set at liberty without danger to himself or to society. No matter how much he might promise, swear, that he would not touch another glass, the inclination before that time is stronger than he—he cannot resist it as long as he can procure it."

The same essayist sets forth the results—near and more remote—of the use of alcohol as follows:

"Now, in ninety cases out of a hundred, drunkenness is first contracted by imitation and politeness, for it is considered very impolite by some individuals to refuse to drink when invited to 'join in.' It soon becomes a habit, and then constitutes one of the most incurable diseases. Every additional glass is one more stitch in that other Nessus tunic called chronic alcoholism, from which, when once entangled in its folds, it is impossible to come out, and Hercules-like, the drunkard dies in the most wretched agony.

"The disease it not even ended by his death, but its influence extends from generation to generation until the extinction of his race. Morel reports many examples of this fact. According to him the sequence is as follows:

"First generation; Immorality, depravity, excess in the use of alcoholic liquors, moral debasement.

"Second generation: Hereditary drunkenness, paroxysms of mania, general paralysis.

"Third generation: Sobriety, hypochondria, melancholy, systematic ideas of being persecuted, homicidal tendency.

"Fourth generation: Intelligence slightly developed, first accession of mania at sixteen years of age, stupidity, subsequent idiocy, and propably extinction of the family."

But quotations need dot be multiplied. Putting aside all moral questions, all considerations philanthropic in their character, it has been shown by the essays before this society, as it has been shown elsewhere, that certain uses of

alcohol touch the civil administration and the practice of the law at a great variety of points, but strikingly at the following:

1. As to testamentary capacity.
2. As to fitness to give evidence.
3. As to competency to contract obligations of a binding character.
4. As to general capacity for wise business management.
5. As to criminal tendencies.
6. As to responsibility for acts of a criminal character.
7. As productive of poverty and pauperism.

And as to all this matter the medical profession has brought from its storehouse of facts and experience a vast array of information, and resting upon this a mass of professional conclusion which cannot be controverted or denied.

It may well be assumed that their call now is to the legal profession—is for the payment of that debt which Lord Bacon declares every one of its votaries owes to it, viz., for the intervention of the lawyer in aid of every proper movement for the modification or the cure of so great an evil. We are ready to take a position in regard to proposed changes affecting the minutest details of the daily practice; we are not slow to discuss the question whether a summons signed by an attorney, or a writ in the name of the people, is the proper and convenient mode for instituting a suit, and rightly so. If any craft known to civilized society, throughout its long and continually brightening history, has been ready with all its powers, natural and acquired, to serve the cause of progress, that craft is the law; and ready it has ever been to enter that service with neither staff, nor scrip, nor money in its purse from those it thus serves. Surely the law should not be behindhand in efforts to secure a mitigation, if not the eradication, of this curse upon civil and governmental administration. Not as reformers, not as temperance men in the technical and narrow sense in which these words are used in every-day life, but upon the same principle, and in the same way, and with the same order with which we enter upon the advocacy of any great reform in civil affairs. How many times have we all draughted and

followed them through the legislature at our own charges; how many times in the interest of society, but at our own cost, have we all taken part in efforts to procure what we thought good legislation or to defeat bad?

Yet here is a practice which in its effects touches the lawyer more nearly than the member of any other profession save that of medicine. That profession has brought here the wealth of its learning and laid it before the society; it has done at least a part of its duty; but I have not observed in any of our papers from my own profession any suggestions for a legislative scheme—to cure the evil, to remove the wrong as touching the administration of the law. It seems to me this can properly be expected, not in any radical or ultra reformatory shape, but as digested by the calm reflection matured by the large wisdom and experience, and sustained and approved by what Mr. Choate, in perhaps the best of his public addresses, termed 'the conservative force of the American Bar."

It is not for me to do this, but it may not be improper to suggest the question whether any idea has yet been presented better than that which gives the law an executory principle, by conferring a right of action in favor of the person injured by the acts or neglects of the drunkard against the seller of the liquor used by him. May I also suggest a radical inquiry as to the difference discoverable upon principles of statesmanship and constitutional law between the common bar-room and the gambling-hell, or between the sale of liquor in the former and the sale of prussic acid and arsenic at the drug-store. And if no difference can be discovered, why not properly the same kind of legislation be applicable to all.

Some suggestions made here, looking to the subject of ventilation as applied to the public school buildings, indicate the prevalence of a sentiment among the members of the society which perhaps justifies the additional observations which I desire to make.

The members of the medical profession, more than any other calling, are brought into immediate contact with the poorer classes. Sore sickness is incident to every family, rich

or poor, and perhaps especially incident to the destitute and ignorant; and in the ministration of the "doctor" it is a peculiar glory of the profession that none are neglected. On such occasions the physician sees the best side of human nature, the best feelings of the heart are aroused, and it is easy to infer from the condition of the mind, as exhibited by the lowest classes in their afflictions, the capacity for improvement and progress of which they are capable. No one doubts the civilizing effects of pure air, and tidy, even if not artistic, surroundings.

If any proof were necessary, the extraordinary experiment of Miss Octavia Hill—in which she was assisted notably by Mr. Ruskin—which resulted in the purification of some of the worst and most debased dwellings in London, and in the real civilization of their inhabitants, and which transformed those dwellings into interest-paying investments, when before they had been a source of loss, is sufficient proof. But while it seems to me that the medical profession, in and of itself, cannot accomplish the needed reforms in the crowded tenements, it can do so with the help of the lawyer if he will wisely use his means for influencing and framing legislation, his opportunities of touching public sentiment at so many points, and especially the frequent calls upon him by capitalists for advice in regard to the mode of treating property and disposing of investments. The two professions cooperating can accomplish almost any desirable result in this direction. Is it not then proper matter for consideration, how much by legislation and how much by operation upon public sentiment can be done toward improving the dwellings of the poorest, and thus facilitating the practice of the physician among the destitute classes, and rendering his service more useful? Attention has not been given to the management of the commonest tenement houses as it should be; effort is not made to keep them cleanly and to keep their inhabitants in the same condition. How much can the Medico-Legal Society do in this direction?

But there is another matter connected with this suggestion; as to which there should be legislation at once.

In the opening of the upper part of the city for dwellings

by the building of the elevated railroads, and in the desertion of a section of the city about the Battery by the more profitable classes of business, a field is open for a reform which it is desirable should be accomplished.

No houses are now built of a convenient character which are within the reach of single families of laborers and artisans of the better class; if they are now to live anywhere in the city, it must be in tenements more or less crowded. There is no reason why the sections of the city which I have specified should not be redistributed or relaid out, so that small houses can be conveniently built, having abundance of light and air, which, in their rentals, would be within reach of the average mechanic for his single family. The advantage to civilization, to good neighborhood, to health, to every department of social economy, secured by such a reform would be incalculable.

Let another matter be brought to your attention. It is, perhaps, mainly to be treated by public sentiment; but in that regard public sentiment should be educated. The police courts and the police justices' courts being civic institutions, bring what we call the State into immediate contact with the largest body of our people—those the least educated—those who know least of the principles upon which a State is organized. Their knowledge of the law, of its administration and its practice, is derived wholly from these courts. If they are to respect the institutions of the country, they are to learn to respect them from the administration of the law as seen by them. They never see, except at rare intervals and in a casual way, the higher courts of the country. They have no more idea of the appearance of the Supreme Court of the United States, of the dignity of its justices, the simple majesty of its proceedings, the solemnity of its debates, and the integrity which characterizes it, than they have of the local disadvantages as a place of human habitation of the moon. All they know of the law, they know from the police and civil justice, and from the lawyer who practices before him.

Then I say with the educated classes—especially with the members of the two professions, one engaged in the admin-

istration of the law, and the other dealing with these poorer classes to such a vast extent under circumstances where they are most susceptible—there should be a decided, a positive, a persistent effort to elevate the condition of these courts. I make no criticism upon any man now presiding in them, but I do say they should be conducted with a dignity, with a sobriety, with a steady reference to the best principles of the law and to the best principles of administration such as is not found in all of them at the present time. The judge upon the bench should understand that he represents the State in one of its highest and most important forms of legal administration.

The controversies of the poor about a few dollars are more important to them than the controversies of the rich over their thousands, and their controversies should be treated with the same consideration, with the same gravity with which the Chief Justice of the Supreme Court treats a controversy before him. If this were done, these courts as a means of elevating society, and of the improving morals of keeping peace, would be of incalculable value. Our duty here is, by the creation and cultivation of a proper public sentiment, to so elevate and so ennoble them that they become constant and healthful teachers. A justice in one of these courts whose conduct is what I have indicated it should be, ought to be looked upon by society as one of its greatest benefactors. He should not be spoken of with contempt. His education, his surroundings, should be such that he can be welcomed to any society which he desires to enter. The terms "civil" and "police" justice should not be upon the lips of certain of our people terms of contempt, but they should be an epithet of honour, and when we come to that we shall have made a long step onward in the elevation of man.

This is a little out of the ordinary line of your essays; it will not, however, do hurt, possibly it may be of some little good.

Law and medicine, in their administration, deal with individuals. The lawyer acquires a profound appreciation of the value of individual and personal right. The physician has

an exalted opinion of the individual man, not only as possessed of mental capacity—of an immortal soul—but as possessed of a body "fearfully and wonderfully made," which is the subject of the profoundest study on the part of those who desire to be worthy of their calling. It is the valuation in both professions of the individual man which gives life and force and moral elevation to their activity, which invokes the exercise of their best faculties. What I have said touches the value of the individual and goes to its just appreciation, and I would fain see realized by all the force of the promise and declaration of God himself when He says "I will make a man more precious than fine gold; even a man than the golden wedge of Ophir."*

* Read before the Medico-Legal Society, Dec. 5th, 1877.

CONSTITUTION AND BY-LAWS

OF

THE MEDICO-LEGAL SOCIETY

OF THE CITY OF NEW YORK.

CONSTITUTION.

June 1st, 1886.

ARTICLE I.

SECTION 1. This Association shall be known as THE MEDICO-LEGAL SOCIETY.

ARTICLE II.

SEC. 1. There shall be three classes of members in this association, viz: Active, Corresponding and Honorary.

SEC. 2. Any person in good standing in either the medical, chemical, or legal professions and scientists, recommended by any member of either of said professions, respectively, after consideration of the proposal for membership by the executive committee, if recommended by the executive committee, shall be eligible to Active Membership.

SEC. 3. Any member of the medical, chemical, or legal professions and scientists, residing outside the city of New York, and recommended by the executive committee, shall be eligible to Corresponding Membership.

SEC. 4 Members of the medical and legal professsions, and scientists of recognized eminence, shall be eligible to Honorary Membership, if recommended by the executive committee. Any such person so elected, who shall not attend the stated meetings of this association, may be removed from such membership upon the recommendation of the executive committee. Such roll of honorary members shall not contain more than forty names, of persons so selected, and the number shall not include more than twenty from either of said professions of medicine and chemistry, or law.

SEC 5. The society may remove any honorary member by a two-thirds vote.

ARTICLE III.

RIGHTS AND PRIVILEGES.

SEC 1. Active members only whose dues shall have been paid for the year preceding, shall be eligible to nomination

or election to office, or entitled to vote. All other rights and privileges shall be equally enjoyed at the meetings of this association.

SEC. 2. Honorary and corresponding members may have the printed transactions of the association delivered to them upon payment of the sum of one-half the annual dues of active members

ARTICLE IV.

OFFICERS.

SEC. 1. The officers of this society shall be a President, two Vice-Presidents, styled first and second respectively, a Secretary, an Assistant Secretary, a Corresponding Secretary, a Treasurer, a Librarian, a Chemist, a Curator and Pathologist, and six Trustees.

ARTICLE V.

DUTIES AND PRIVILEGES OF OFFICERS.

SEC. 1. The President, or in his absence the vice-presidents in their order, or in their absence a chairman *pro tempore*, shall preside at all meetings, and such presiding officer shall perform all the duties connected with such office while presiding in the meetings of this society.

SEC. 2. The Secretary shall keep the minutes of the proceedings of the meetings of the society, and of the executive committee; and, at the stated meetings of the society, he shall collect and give receipts for the fees and dues of members, in the absence of the treasurer; and he shall pay over the sums so collected to the treasurer, as soon thereafter as practicable, giving the name or names of those having so paid, therewith, to said treasurer, and take a receipt from the treasurer therefor; and, in addition thereto, he shall notify officers and members of committees of their election or appointment, and members-elect of their election; certify official acts, and procure and sign with the president certificates of membership, and deliver the same to new members; and perform such other duties as are usually connected with the office of secretary.

SEC. 3. The Assistant Secretary shall keep a list of the active members, issue the notices of the meetings, and in the absence of the secretary, perform his duties as hereinbefore specified.

SEC. 4. The Corresponding Secretary shall conduct all the correspondence of the society except that with active members.

SEC. 5. The Treasurer shall attend at all meetings to collect the fees and dues of members and give receipt therefor, personally, or by the aid of the secretary as hereinbefore specified; and he shall have charge of all moneys so collect-

ed, belonging to the society, and deposit the same in the name of this society, pay all expenses incurred by the society, by and with the consent of the executive committee ; and he shall present an account of the moneys so collected and deposited, and expended, with the items of deposits, or of expenditure, for the month preceding, at every meeting of the executive committee ; and he shall report the number of members in the society, up to the date of said report, with the number of those in arrears, with the respective sums due from each, at least once in three months, or oftener if so required by said executive committee ; and upon the last stated meeting of the society prior to the election of officers, he shall make his annual report to the society at such meeting ; and state the amount of money on hand at the commencement of said year ; the amount received for dues from members, and for initiation fees from members elect, during said period ; and the names of persons who had been so elected ; who had failed to pay such fees, and dues ; and the names of members who are then in arrears for dues, with the amount so due from them respectively, at the date of said report ; and he shall add therto such recommendations in regard to improvements which can be made to facilitate the transaction of the business of his office as he may deem beneficial.

SEC. 6. The Librarian shall preserve, and hold accessible to members of the society, all its written and printed contributions contained in the library, and report the condition thereof at the annual meeting of the society, prior to the meeting for the general election.

SEC. 7. The Chemist shall have charge of all the business of the society relating to chemistry ; and he shall make his report upon the matters of such description which have been brought before the society during the year, with his recommendations in regard thereto.

SEC. 8. The Curator and Pathologist shall have charge of all pathological specimens offered to the society, and prepare the same for exhibition ; and upon the direction of the society, or of the executive committee, he shall take proper means to preserve such specimens as possess Medico-Legal merit, for the benefit of the society, and make an annual report in regard thereto.

SEC 9. The Trustees of the society shall receive all property belonging to the society, and deliver the same to the proper officer of the society assigned to have charge of the same ; and said trustees shall exercise a general supervision over such property, for the preservation of the same, and make and retain an inventory thereof, for the use of the soctiey ; and at the annual meeting said trustees shall make

their annual report to the society to show the condition and value of such property, and the increase or decrease in such value, together with a description thereof, and as to the value thereof at the last annual report, and the value of all additions thereto, with a description thereof, since such prior annual report.

SEC. 10. It shall be the duty of every officer or trustee of the society to attend at every meeting of the society and o the executive committee; and any officer or trustee who neglects to so attend, and who shall absent himself from two of such consecutive meetings, without sending a notice in writing of his intended absence, shall be deemed to have vacated his office thereby, and a notice of such vacancy shall be thereupon published, at said second meeting; and the said office shall be filled by election at the next stated meeting, for the balance of the term of such officer, unless such officer is excused by the society or executive committee.

ARTICLE VI.

THE EXECUTIVE COMMITTEE.

SEC. 1. The officers and trustees of the society shall constitute an Executive Committee, which shall meet at least once in each month, prior to stated meetings of the society, to consider and transact such business as shall be transmitted to them by the society.

SEC. 2. The ex-presidents of the society, while they attend the meetings, and remain in good standing as active members of the society, shall be *ex-officio* members of the executive committee.

ARTICLE VII.

PERMANENT COMMISSION.

SEC. 1. The organization of a Permanent Commission may be provided for and continued by the society.

ARTICLE VIII.

TRUSTEES.

SEC. 1. There shall be six Trustees chosen equally from the medical profession or chemists, and the legal profession, two of whom shall be chosen annually for three years; and in the case of a vacancy occurring, the same shall be filled for the unexpired term by an election from the profession to which said office belonged.

ARTICLE IX.

ELECTIONS.

SEC. 1. All elections shall be determined by a majority of the votes cast for the office to be filled thereby.

SEC. 2. Elections of new members shall be decided by requiring at least two-thirds of the votes of members present at

a stated meeting, voting by ballot, in favor of such election, unless the society order otherwise

ARTICLE X.

AMENDMENTS—HOW MADE.

SEC. 1. Amendments may be made to this Constitution, after having been proposed in writing, at least one month prior to the stated meeting when the same shall be called before the society to be voted upon, after the same shall have been recommended by the executive committee. A majority vote of the members present shall be necessary for the adoption of such amendment.

ARTICLE XI

BY-LAWS.

SEC. 1. By laws for the regulation of the business of the society may be prepared and adopted by the society.

BY-LAWS.

ARTICLE I.

MEETINGS AND QUORUM.

SECTION 1. Stated meetings of the Society shall be held once in each month, except in July and August, on such day as may be designated by order of the society or executive committee; and special meetings at the time fixed by vote or by the executive committee.

SEC. 2. Stated meetings shall begin at eight o'clock, p.m. or as soon thereafter as a quorum is assembled; and special meetings at the hour designated in the call therefor.

SEC. 3. Ten active members shall constitute a quorum for business before the society.

SEC. 4. Five members of the executive committee shall constitute a quorum for business before such committee.

ARTICLE II.

ADMISSION OF MEMBERS.

SEC. 1. The names of candidates shall first be referred to the executive committee. If reported upon favorably by said committee, they shall be balloted for, at the time the report is made, or at some subsequent stated meeting. Two-thirds of the votes cast shall be necessary for an election to membership.

SEC. 2. Every active member elect shall sign the Constitution, or a formal acceptance of membership, within three

months after notice of his election ; and in default thereof said election shall be deemed void.

ARTICLE III.

FINANCIAL AND ETHICAL REQUIREMENTS, AND VIOLATIONS THEREOF.

SEC. 1. Each active member shall pay an initiation fee of five dollars, which, with signing the Constitution, or acceptance of membership, shall entitle him to a certificate of membership, of the society.

SEC. 2. There will be an annual assessment of, and members will be required to pay, four dollars, unless otherwise regulated by the society. But any member may commute such annual assessment by the payment of thirty-five dollars at one time, which shall exempt him from annual assessments for life, although he shall still be liable for his quota as a member for any extraordinary assessments which the society may think proper to order.

SEC. 3. Any active member who shall neglect to pay his dues or assessments for six months, shall be notified of the fact by the treasurer ; and should he for three months after such notice neglect or refuse to pay, a penalty of ten per cent. shall be added to his said dues, and the same be collected therewith : and upon his continued refusal to so pay, his name shall be stricken from the roll of members of the society in one month thereafter.

SEC. 4. The ethical rules of the society shall be the same as those governing the medical and legal professions generally.

SEC. 5. Charges against members shall be made in writing, enclosed in a sealed envelope, and referred to the executive committee under such seal.

SEC. 6. In case of charges being so made, and the committee shall think that the charges are of so grave a nature as to require an answer thereto, copies of the same, under seal, shall be served upon the accused, and he shall be cited to appear before the said executive committee, and required to answer the said charges, at a meeting to be held not less than fifteen days from the time of serving such notice ; and such member may be suspended from his rights as a member, pending such examination by said executive committee.

SEC. 7. After due examination, the said committee may acquit, admonish, or recommend the expulsion of such delinquent ; or it may suspend him from a participation of the privileges of the society for a period of not exceeding three months, thereupon.

SEC 8. If the committee shall think the member ought to be expelled from the society, it shall be its duty to report

the charges, and the evidence supporting the same, to the society, for action thereupon.

ARTICLE IV.

THE PUBLISHING COMMITTEE.

SEC. 1. All papers read before the society shall be referred to the Committee on Publication, consisting of the president, secretary, and librarian, for consideration as to their merits for the advancement of Medico-Legal science, with power to publish the same, if they shall consider the same proper, for the information of the members of the society.

ARTICLE V.

SEC. 1. The annual meeting for the election of officers and trustees shall be held in December in each year, and the election shall be made by ballot at the said December meeting, nominations having been made therefor at the preceding stated meeting, as follows: The Assistant Secretary shall, at least two weeks before the annual meeting, forward by mail to every member entitled to vote and not in arrears for dues, a membership list with a list of members, and a ticket printed in blank for the various offices to be filled, also a blank envelope addressed to the Assistant Secretary.

Members entitled to vote shall fill up the blank ballot and return the same to the Assistant Secretary by mail or otherwise, under seal.

At the annual meeting the Assistant Secretary shall deliver the said envelopes to three tellers to be named by the President, who shall proceed at once in the presence of the Society, to count the votes of the said ballots and announce the result to the Society. Each election list and envelope shall be separately numbered and a duplicate list kept by the Assistant Secretary.

In case no choice is made by the said vote, counted and announced by the tellers for any office, the same shall be filled by a vote by the Society by ballot.

Any member shall be entitled to receive his election list and vote at any time before the polls are actually closed, on payment of all arrears of dues, if in good standing.

SEC. 2. Vacancies can be filled at any time by a special election, at any stated meeting, nominations having been made and announced in the same manner as required for annual elections.

SEC. 3. At the meeting next succeeding the annual meeting, no business shall be transacted except the reading of the minutes, the report of the executive committee, the election of proposed members, and the addresses of the retiring

and newly-elected presidents, unless the society shall otherwise order.

ARTICLE VI.

ORDER OF BUSINESS.

SEC. 1. At the meetings of the society the following shall be the order of business:

1. Calling the meeting to order.
2. Reading the minutes.
3. Payment of dues, fees, and fines.
4. Reports of Executive Committee, and election of proposed members
5. Reports of Special Committees.
6. Reports of Permanent Commission.
7. Reading the Paper of the Evening.
8. New business.
9. Unfinished business.
10. Adjournment.

SEC. 2. In relation to the order in which the business shall be conducted in the society, the following shall be the order of precedence in which the same shall be presented by the president for consideration:

1. Motion to adjourn.
2. Motion to lay on the table.
3. Motion for the previous question.
4. Motion to postpone to a day certain.
5. Motion to send to a committee.
6. Motion to amend.
7. Motion to postpone indefinitely.
8. Motion for special business.
9. Motion concerning questions of order.
10. Motion to suspend the rules.

SEC. 3. The said respective motions shall be submitted for the consideration of the society, and each shall have precedence before all motions submitted prior thereto, in the numerical order hereinbefore specified; and the same shall be considered in their proper order, in the manner usual to deliberative societies.

ARTICLE VII.

SUSPENDING AND AMENDING BY-LAWS.

SEC. 1. Two-thirds of all the votes cast at a stated meeting of the society shall be sufficient to suspend the By-Laws.

SEC. 2. For their amendment the same rule and same vote shall be required as for amendments to the Constitution.

THE PERMANENT COMMISSION.

THE society, at a meeting held Februrary 16, 1876, unanimously adopted the following resolution, establishing The Permanent Commission :

RESOLUTION.

SEC. 1. There shall be established a Permanent Commission consisting of the president and six members, to be elected by the society, upon the recommendation of the executive committee, chosen equally from the Medical and Legal Professions. At the first election two members shall be chosen for three years, two for two years, and two for one year; and thereafter two members annually for the term of three years.

SEC. 2. The Permanent Commission is charged with the duty of receiving all cases, questions, or demands for advice that may arise between the regular meetings of the society, and of acting upon them as speedily as possible.

SEC. 3. Five members shall constitute a quorum ; and a majority of those present shall decide upon what report or answer to make to cases, questions, or demands submitted.

SEC. 4. Cases, questions, or demands shall be addressed to the president of the society, who shall thereupon call the commission together as soon as practicable.

SEC. 5. The permanent commission shall report as soon as practicable, directly to the person, officer, or authority making a demand or submitting a case or question, and also to the society at its next ensuing meeting.

SEC. 6. The report or opinion of the Commission shall not bind the society, but are subject, by a vote of the society, to be either rejected, modified, or confirmed.

SEC. 7. The Commission shall elect their own chairman and secretary ; and the secretary shall keep a record of the proceedings of the Commission.

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Forbes Winslow, M. D.,
London.
William C. Wile, M. D.,
Sandy Hook, Conn.

* Deceased.

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Dec. 31, 1885.

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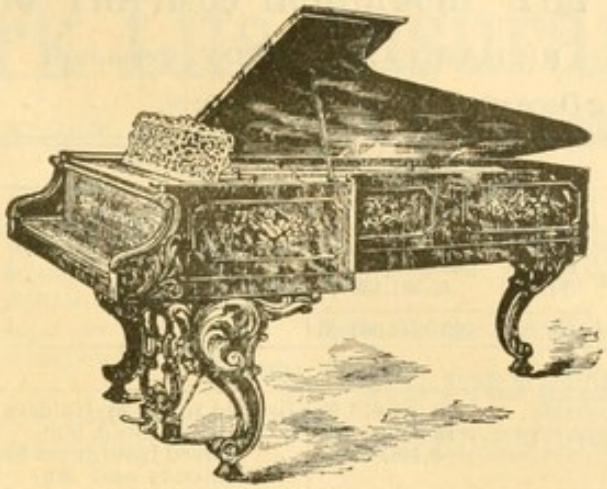

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STATEMENT OF
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

RICHARD A. McCURDY, President.

For the year ending December 31st, 1885. ASSETS, - - $108,908,967.51

INSURANCE AND ANNUITY ACCOUNT.

	No.	Amount.		No.	Amount.
Policies and Annuities in force, Jan. 1st, 1885.	114,865	$351,815,941 07	Policies and Annuities in force Jan. 1st, 1886	120,952	$368,981,441 36
Risks Assumed.....	14,334	46,507,139 16	Risks Terminated..... ...	8,247	29,341,638 87
	129,199	$398,323,080 23		129,199	$398,323,080 23

REVENUE ACCOUNT.

Dr.		Cr.	
To Balance from last account.....	$97,009,913 08	By paid to Policy-Holders :	
" Premiums.....	14,768,901 93	Endowments & purchased Insurances	$5,270,116 34
" Interest and Rents...	5,446,052 35	Dividends and Annuities.....	3,211,900 00
		Deceased Lives.....	5,920,033 56
			$14,402,049 90
		" Other Disbursements :	
		Commissions and Commutations..	$1,228,679 84
		Taxes	266,656 50
		Expenses .....,	991,954 14
			2,487,290 48
		" Premium on Stocks and Bonds Purchased	469,882 87
		" Balance to new account.....	99 865,644 11
	$117,224,867 36		$117,224,867 36

BALANCE SHEET.

Dr.		Cr.	
To Reserve for policies in force or terminated.....	$103,846,253 00	By Bonds Secured by Mortgages on Real Estate.....	$49,228,930 16
" Premiums received in advance..	50,080 78	" United States and other Bonds..	39,396,104 00
" Surplus at four per cent.....	5,012,633 78	" Loans on Collaterals.....	3,856 500 00
		" Real Estate.....	10,992,720 45
		" Cash in Banks and Trust Companies at interest.....	2,619,643 21
		" Interest accrued	1,217,329 85
		" Premiums deferred and in transit.....	1,438,189 55
		" Sundries.....	189,550 20
	$108,908,9 7 51		$108,908,967 51

I have carefully examined the foregoing statement and find the same to be correct.

A. N. WATERHOUSE, Auditor.

From the Surplus above stated a Dividend will be apportioned as usual.

NEW YORK, January 20, 1886.

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FROM THE

FORTY-FIRST ANNUAL REPORT

OF THE

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346 and 348 BROADWAY, NEW YORK.

A total income of over sixteen million one hundred thousand dollars, and payments to policy-holders of nearly eight million dollars.

Interest income, over three million dollars, being about 5½ per cent. on average net assets, and nearly four hundred thousand dollars in excess of losses by death.

Market value of securities, over three million three hundred thousand dollars in excess of their cost.

Liabilities, both actual and contingent, provided for, and a Divisable Surplus by the Company's standard of over seven million dollars. Surplus by the State standard, over thirteen million dollars.

An increase of nearly two million dollars in income, over three millions in surplus, over seven millions in assets and of over thirty millions of insurance in force, during 1885.

SUMMARY OF REPORT.

BUSINESS OF 1885.

Received in Premiumsd	12,722,103 03
Received in Interest, Rents, etc.	3,399,069 71
Total Income	**$16,121,172 74**
Paid Death-claimds	2,999,109 64
" Endowments	741,764 47
" Annuities, Dividends, and for Policies Purchased	3,940,999 64
Total Paid Policy-holders	**$7,681,873 75**
New Policies Issued	18,566
New Insurance Writtend	68,521,452 00

CONDITION JAN. 1, 1886.

Cash Assets	**$66,864,321 32**
*Divisible Surplus, Co.'s Standard	$7,064,473 13
†Tontine " " "	3,123,752 77
Total Surplus	**$10,188,215 90**
Surplus by State Standard	**$13,225,053 94**
Policies in Force	86,418
Insurance in Force	259,674,500 00

PROGRESS IN 1885.

Excess of Interest over Death-losses.	$399,960 07
Increase in Income	1,880,697 35
Increase in Surplus, State Standard	3,313,707 48
Increase in Assets	7,580,567 75
Increase in Insurance Written	7,036,902 00
Increase in Insurance in Force	30,291,914 00

*Exclusive of the amount specially reserved as a contingent liability to Tontine Dividend Fund.

†Over and above a 4 per cent. reserve on existing policies of that class.

The Seven Advantages

OF THE

New York Life Insurance Company's

NON-FORFEITING TONTINE LIMITED-ENDOWMENT POLICY.

FIRST ADVANTAGE.—Insurance for a definite amount, or for an amount increasing with each premium paid, as desired.

SECOND ADVANTAGE.—A Definite Cash Endowment, and a Tontine Dividend, to Policies in force at the end of Endowment and Tontine periods, which periods correspond, and may be either Ten, Fifteen or Twenty Years.

THIRD ADVANTAGE.—Insurance for the full amount of the Policy, extending for as long a time as the value of the Policy will carry it, within the Endowment period, in case of discontinuance of payment of premiums after three years.

FOURTH ADVANTAGE.—A Grace of one month in the payment of premiums, during which time the policy-holder's security is unimpaired.

FIFTH ADVANTAGE.—Three valuable options, including cash value, to policy-holders who survive their Tontine and Endowment periods and keep their policies in force.

SIXTH ADVANTAGE.—Practical freedom of action with respect to occupation, residence and travel.

SEVENTH ADVANTAGE.—The payment of death-claims immediately upon the approval of the required proofs of death.

Do not insure until you have seen full particulars of this Policy. Do not fail to write the nearest Agent, or the home office, for such particulars —at once The NEW YORK LIFE INSURANCE COMPANY, 348 Broadway, New York City.

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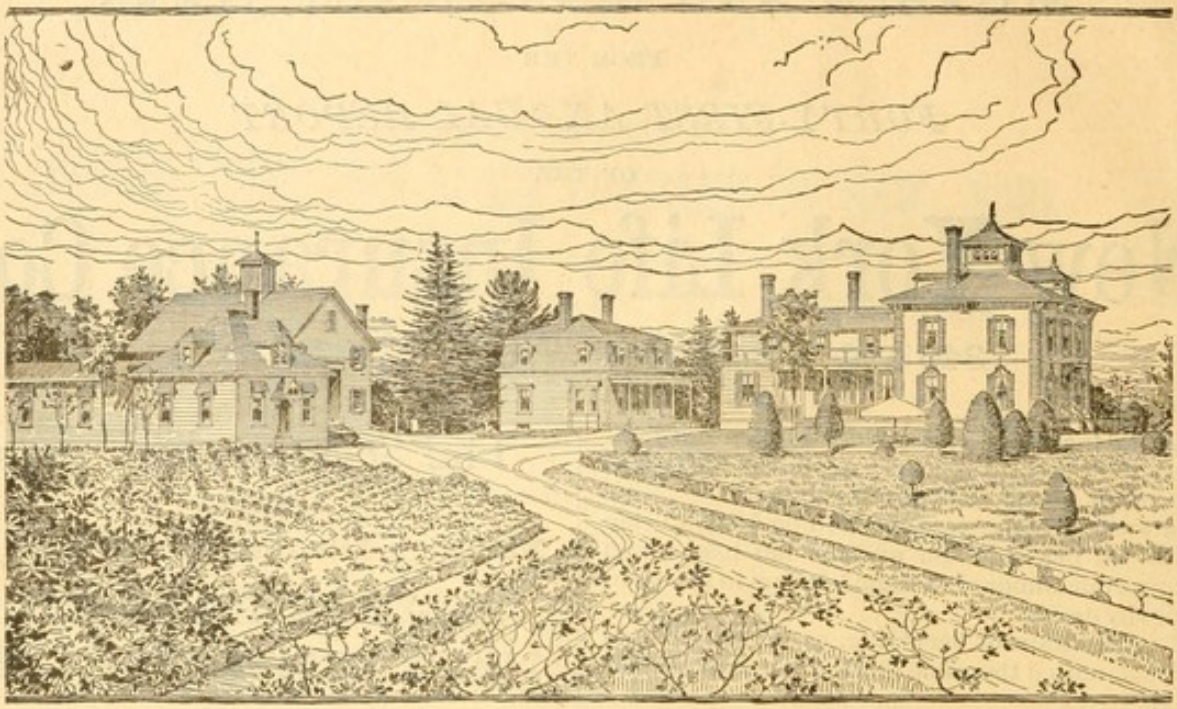

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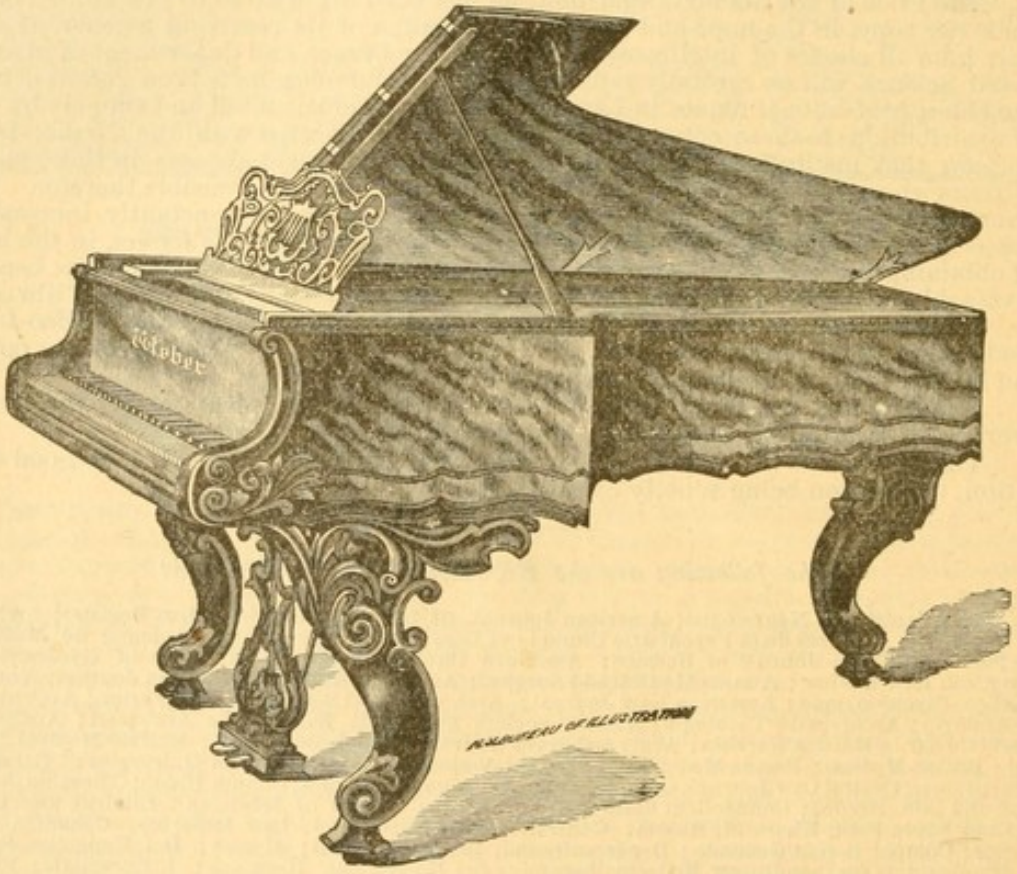

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