

**On the scientific value of the legal tests of insanity : a paper read before the Metropolitan Counties Branch of the British Medical Association / by J. Russell Reynolds.**

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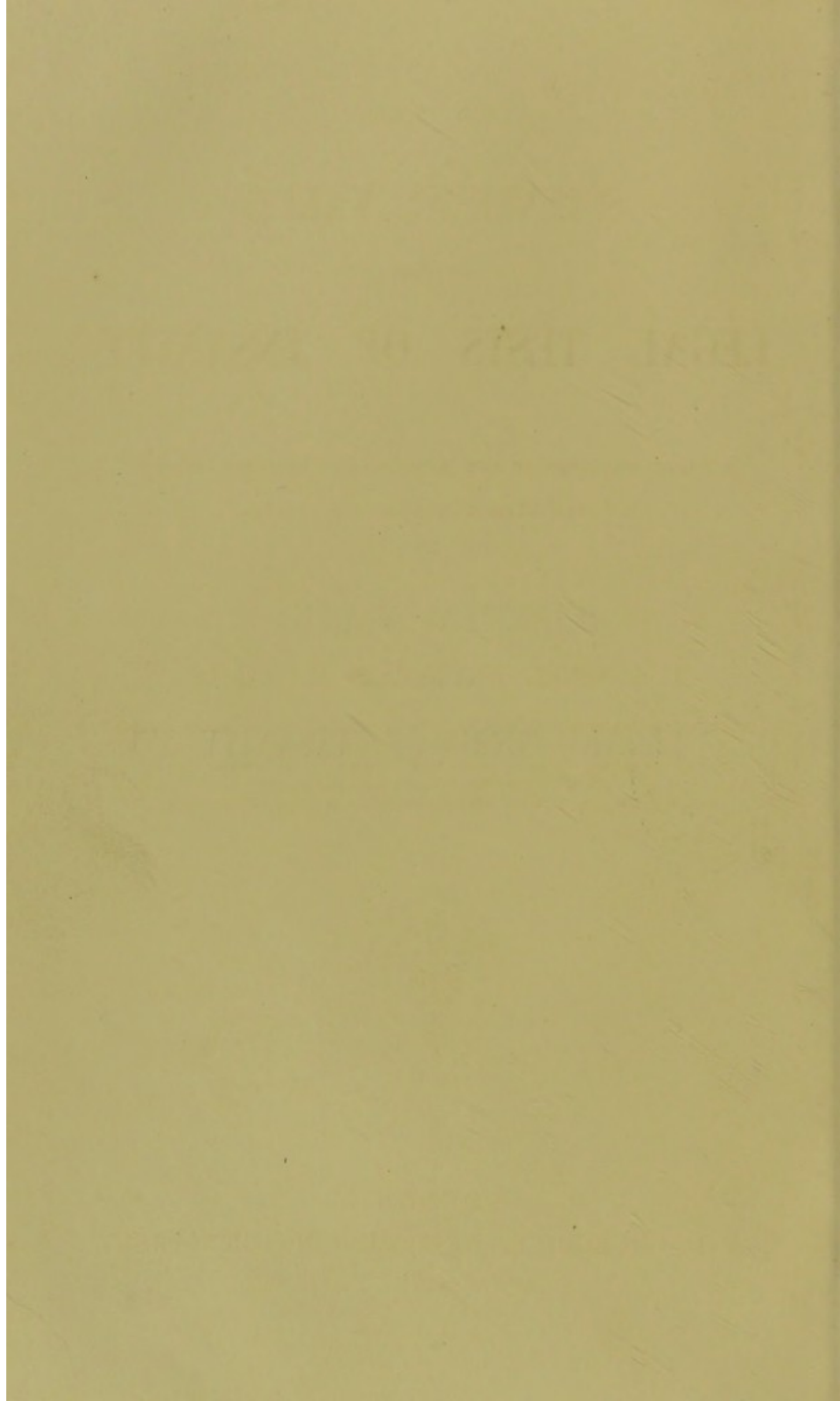
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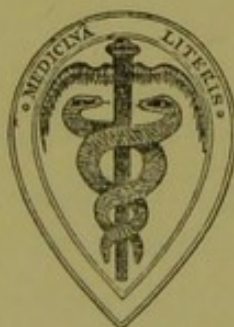
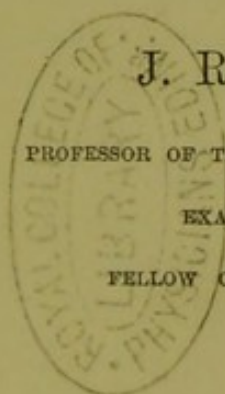
ON THE  
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A PAPER READ BEFORE THE METROPOLITAN COUNTIES BRANCH  
OF THE BRITISH MEDICAL ASSOCIATION

BY

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It is my object in this paper to examine the scientific value of the legal tests of insanity ; to show that the two professions, the legal and the medical, which frequently come into collision on this matter, approach it from points of view so widely separated, that their united action is, in many cases, quite impossible ; that this is so, because the idea that is entertained by the lawyer as to what the word insanity means is so different from that which the physician holds to be true, that nothing but hopeless confusion can often arise, when, what we may term, a not very friendly conversation occurs between the 'learned counsel' and the 'scientific witness' in a 'court of justice'; and, further, that it cannot be otherwise, if the present legal tests of insanity are maintained in the present state of science.

The unsatisfactory condition of the law, in regard of this matter, is exhibited, and that with increasing frequency, year by year. We see prisoner after prisoner sentenced to be hanged—in conformity with legal dogmata, as they are pronounced by our learned



judges, but in spite of scientific protest that such prisoners are insane—and we see the sentences subsequently revoked, by appeal to the Home Secretary, who acts upon the advice of scientific referees, and of the judge who presided on the trial; the former often simply repeating what had been urged in the evidence for the defence; the latter agreeing in the judgment which he was bound, legally, to oppose. My wish, in bringing this matter under the notice of the Medical Association, is to take the first step towards the holding of a conference, that shall be quite friendly, between some members of the two professions, with the purpose of devising means for bringing the legal criteria of insanity into harmony with the facts of science.

In a legal inquiry, the end to be obtained by the lawyer is identical with that which the physician sets before himself, viz., the diagnosis, discrimination, or distinction, in a particular case, of insanity from sanity, and from feigned disease. The object of the two professions, when they thus come in contact, is the same; it is not then to determine what insanity is; nor what are the signs of its presence; but whether the signs, criteria, or tests of its existence applied to the case in question, will place the individual in the category of the sane or insane. Each profession has arrived at an understanding among its own members as to what insanity is, and what are the signs of its presence; but, unfortunately, the two do not agree upon either point. The medical profession has engaged itself upon the first of these questions, in its study of the nature or pathology of insanity, in all its forms, phases, and degrees; and it



is by reason of its having done this that it is able to furnish an account of its signs or tests. The legal profession can scarcely be said to have directed much of its attention to this point; it has regarded only certain forms and degrees of insanity, and these from a particular position, and with a special object; and it is because it has occupied that position, has been thus limited, and been actuated by that special motive, that it has erected its distinctive marks of the condition. We of the medical profession regard insanity of mind as the outcome of a diseased state of the body, having a definite origin, causation, development, and history; the presence of which can, in a few cases, be at once recognised by some rough sign or coarse symptom, such as great disturbance in the thought, feeling, or conduct of an individual, but which often, and for a long time, presents no such obvious and wide departure from the state of mental health, and yet may be as surely present, and as familiar to the skilled observer of bodily as well as mental changes, as if there were raving frenzy, the most obvious delusions, or the wildest crimes. The legal profession, on the other hand, regards insanity in its relation mainly to gross criminal acts, or to the capacity for the disposition of property; and it sees nothing, and avowedly knows nothing, of the disease except in this narrowed field—narrowed often not only in regard of place but of time—and it has drawn sharp lines, and has insisted upon distinctions which it is comparatively easy to draw or make, but which, I humbly venture to say, are artificial lines, untrue to Nature, and the recognition of which is fraught with danger to humanity and justice.



In order to establish the position I have assumed, I propose to examine *seriatim* the scientific value of the legal doctrines with regard—1st, to the tests of insanity generally—*i.e.*, as to what is legally understood by the words ‘insane’ or of ‘unsound mind’; 2nd, the legal test of insanity when this condition of mind is made the plea of innocence in criminal trials; and 3rd, the legal dogma in respect of mental capacity—testamentary and other—in cases of alleged mental weakness, or of ‘partial insanity.’

My object is, not to point out all the criteria of insanity that we, as medical practitioners, should employ—this would be a work far beyond the limits of my time and your patience—but simply to show that those which are now recognised by the law are unsatisfactory and untenable, because opposed to scientific knowledge.

## I.

As to the legal doctrine with regard to insanity generally, Shelford gives this definition of sound and unsound mind: \* 'A sound mind is one wholly free from delusion; an unsound mind, on the contrary, is marked by delusion' (p. 41). 'The true criterion, the true test, of the absence or presence of insanity . . . may be comprised in a single term, namely, delusion' (p. 42). Delusion is thus defined by Shelford: 'A belief of facts which no rational person would have believed' (p. 42). It is, says he, 'the true and only test. In the absence of any such delusion, with whatever extravagances a supposed lunatic may be justly chargeable, and how like soever to a real madman he may either speak or act on some subjects or on all subjects; still, in the absence of anything in the nature of delusion, so understood, the supposed lunatic is not properly or essentially insane' (p. 42). The term 'lunatic means every insane person, and every person being an idiot or lunatic or of unsound mind' (p. 6). †

Regarded from a scientific point of view, this cannot be held to be a correct definition or safe criterion of insanity. It is incorrect, because many undoubtedly insane persons have no delusion; and it is unsafe, when delusion is said to be present, because the value

\* Leonard Shelford, *Practical Treatise of the Law concerning Lunatics, Idiots, and Persons of Unsound Mind*, 2nd edition, 1847.

† 8 and 9 Vict., c. 100, s. 114; c. 126, s. 84.



of delusion as a test of insanity varies between the widest ranges possible; and although sometimes recognisable as such with the greatest ease, it is, at other times, scarcely separable from the errors of judgment committed by those who are indisputably sane.

In the earlier stages of a well-known form of insanity, viz., melancholia—that kind of disease which has very frequently led to suicide—there is often nothing which could be called delusion. There is an overwhelming, crushing feeling of unrest, distress, fear or actual terror. The patient cannot find comfort anywhere; he may be surrounded by friends and circumstances of the kindest and most favourable sort, but the past to him seems gloomy, or only a painfully bright contrast with the present shade, while the future, both in this world and the next, lies hidden in impenetrable and oppressive darkness—a darkness that may be felt, but cannot be expressed. In this state the patient often admits that he knows not what is troubling him; that there is no reason why he should not be happy; that there is nothing which he ought to fear; but yet, in spite of reason and assurance and fact, he is dejected, sleepless, hopeless; ‘man delights him not, nor woman neither;’ life is a burden he would gladly cast aside, death is a horror he dare not face; and yet his torment becomes so great and so intolerable that the idea, or the impulse, which has perhaps often, for a moment, presented itself to him before, and has been shrunk from with alarm and loathing, becomes realised,—an open window or a river furnishes the opportunity,—and, so far as we can tell, the misery is over. The



physician knows that this is a form of bodily disease, with a history as definite as that of measles; an inquest is held upon the body, and the verdict, returned without delay, is that of death in a condition of 'temporary insanity.' Insane undoubtedly the patient was, but his condition was one in which there was no delusion, and, tried by that test, he should have been pronounced sane, and condemned to a felon's grave. But common sense is sometimes found in a Coroner's court, and it overrides legal definitions; and, moreover, common humanity is almost always there, and it deals tenderly with all those whose troubles have driven them to take refuge somewhere beyond the reach of our assistance, solace, praise, or blame. This action of the jury is an instructive comment upon the nature of the case I have attempted to describe. It shows the kinship of the jury, supposed to be sane, with the melancholiac, pronounced to be insane. The latter does that which is against his reason, against his conviction of right, to the urgent distress, as he well knows, of those about him, and who are to him most dear, and with a persuasion that he is passing to woes that he sometimes *believes* may be infinite, in order to escape from woes that he *feels* to be intolerable. The jury acts on feeling as it were instinctively, or with a blind impulse, and often distinctly against conviction of right, and with no delusion. The jury does not admit—human conscience will not admit—that suicide is in itself a test of madness; and yet, when the case comes before it, and it has to give its verdict upon A or B, it acts, like the melancholiac, upon



*feeling*, and softens its own admission of insanity by the meaningless or most inappropriate qualification—‘temporary.’

A lady of great mental power and culture attempted to destroy herself, but failed, and was horrified at her conduct, and for weeks was the subject of intense remorse. Persuaded that her conduct was the result of physical disease and not of moral depravity, she regained composure, and for many months appeared quite well. But, suddenly, another desperate, and this time successful, attempt at suicide was made; many hours, however, elapsed between the injury she had inflicted and its fatal issue, and during this time her repentance was profound, and she could neither give an explanation nor attempt a justification of her conduct. She had no delusion; her sense of right and wrong was of the keenest kind; she acted upon a blind morbid impulse, the result of cerebral disease, for which she was no more accountable or responsible than would be the man who in a fit of delirium from typhus fever or inflammation of the membranes of the brain, should jump from a window or brain his attendant with a hammer.

Melancholia is not the only illustration of this scientific fact. All forms of insanity show that the conditions underlying them are those of disease of the nervous system, having close analogies with disease in other organs or systems of organs; and, like other diseases, they have their history, and own no sudden or abrupt commencement, and have no invariable pathognomonic sign. It often happens that the apparent commencement is abrupt, that something



an individual has said or done has been so unlike what had been expected, that friends begin to think there must be something wrong. It may be, but it very rarely happens, that some obviously insane delusion, rambling talking, absurd or violent conduct, is the first fact that has awakened suspicion of insanity. Usually such suspicions have existed for a longer or shorter time; and when they have not done so, it is because those who should have entertained them have been either slow to observe, and slower still to think, or have been blinded by prejudices, which, in the relatives of one unquestionably insane, are sometimes so strong that they furnish evidence of the family and hereditary taint of mental failure, showing itself in another phase. How often it happens, the physician knows full well, that, when insanity has declared itself in this way, the friends, looking back into the past, recognise—in the words or silence, in the conduct, the apathy, or inaction of the patient—that which should have been a warning or a ground of action; that which was regarded as a mere whim or oddity, or dulness, or bad temper, or perverse judgment, or pardonable vanity, but which now is distinctly seen to belong to a train of symptoms gradually leading up to the present phrensy. Known as a whole, known intimately, there has been no sudden change; there has been slowly progressing disease, and that which seems abrupt is abrupt in seeming only; there is a difference in the kind of revelation that is given to us, but to the individual who is insane, the conduct and the words come as naturally from the perverted thought or feeling as those did



which were observed in months or years that have gone by. Often some accidental circumstance, some apparently trivial event, may be the determining cause of the outbreak—the immediate precursor of the declared symptoms—but the conditions have been there before, and, as in the old adage, the new event was but as ‘the last straw’ that made the burden intolerable, and that led to the terrible *dénouement*. The back had been bowed down, and, wearied with its accumulating weight, had groaned, audibly or inaudibly, beneath it through long weary hours or years, and it needed but an additional ‘straw,’ a mere trifle at the last, to break through the barriers of reserve, to master the overstrained powers of resistance, and bring disorder into the place of order or seeming order, madness into the place of calm.

It is by an investigation of insanity in its early stages that the physician appreciates its nature, and learns to know its signs. Everything which can throw light upon its possible causation has to be taken into account in his diagnosis. The influence of hereditary taint is such that it requires his closest attention. The presence or absence of insanity in parents, ancestors, or collateral relations will be duly regarded; but not only so, the existence of a neurotic, or morbidly nervous propensity, in the family of a suspected person has its influence upon his judgment. We meet, for example, with epilepsy in one relative, or with hysteria, or intemperance, torticollis, or some erratic nervous pains in another; we learn that some of the family suffered early from paralysis; that such an one was ‘queer;’ that another could ‘never



be made to do anything ;' and that, as a whole, there was 'a something strange' in many of the household. Further still, we know that insanity has some kind of relationship with those enfeebled states of nutrition that go by the names of tuberculosis, scrofulosis, and the like ; and that, with them, it may sometimes be found diffused, in a variety of forms, among those who have been the offspring of repeated intermarriages of relatives. Again, we know pretty well some of the most frequent determining causes of the affection—such as intemperance in regard of alcohol ; venereal excesses ; over-exertion of brain, especially in youth ; worry and anxiety in after years ; the pressure of want ; the struggle to maintain appearances ; the concealment of grief ; the bitter pangs of jealousy ; disappointed hope ; smothered affection ; the constant wear and tear of petty annoyances, so petty often that the most provoking thing about them is their littleness. And yet further, all those strange *emotions* which often conflict so fiercely with *thought* in regard of life and motive, the beginning and the ending, the whence and the whither of that strange, and yet best known, thing we call ourself ; those questionings that can find no answers that will satisfy that self, however glibly or confidently they may come from the lips of those we love or have been taught to reverence ; and all those mysterious alliances that we have with a world we cannot see, but which seems so real that our relations to it, in some form or another, fill the minds and hearts of many who are morbid, to the exclusion of almost every other object ; and with those who are not insane



make up what we term the *religio*, or religion of our life ;—these, any or all of them, enter into and mould and fashion the healthy brain to do healthy work ; or, in undue order, or with extreme force from without, or by reason of some undue susceptibility within, disturb the growth of brain, derange the relations of its parts, upset the harmony of function, and result in an unsound mind.

But outside the region of mind and emotion, there are physical disturbances of great significance which the skilled physician can observe and interpret, but which might be unnoticed or even denied by the patient and his nearest friends. A gentleman had a trifling source of annoyance ; was sleepless at night, worried in the day ; he took a holiday and change of air, but was still uneasy and distressed ; admitted that there was no cause for his anxiety, and talked rationally on everything. He seemed, however, to attach an exaggerated importance to his own position and that which had disturbed it. He always ‘thought rather much of himself :’ ‘there is nothing in that,’ said his friends ; but he every now and then ‘clipped his words,’ and his lower lip trembled, and his gait was in a trifling degree unsteady, his legs a little wide apart, his step short and uncertain. He would not admit it ; his friends saw no difference in him in these respects. The pupil of one eye was a little larger than the other, but I could not ascertain when this alteration had commenced : his sight was good. A week or two after my seeing him, he made a desperate attempt at homicide, apparently unprovoked : he knew and admitted that what he had done was wrong, said that



he should or ought to be tried for it, and be hung, and be damned, but that he should do it again if he had the chance, in spite of all its wickedness and consequences. Some time afterwards, he told me that he was 'the Holy Trinity ;' and I need not tell medical men that he passed into the state of 'General Paralysis of the Insane.' Here, for some weeks, the most characteristic features of disease were physical, not mental ; and he could not have been legally pronounced insane, although medically we should have said that he had most serious brain-disease.

When we contrast the condition of an acknowledged lunatic at the present time with that which the same person exhibited ten years ago—and with regard to whom there would be no difficulty or doubt in affirming that now he is insane, and that then he was of sound mind, memory, and understanding—we may learn much with regard to the legal and the medical criteria of insanity, and may see plainly the wide divergence between the views and the methods of the two professions. According to the theory and practice of the one, there must have been a period when the individual passed, as it were *per saltum*, from the one condition to the other ; according to the knowledge of the other, the transition has been so gradual that no such sudden leap was ever taken. The mental state and capacity might have become the topic for legal inquiry at any period of those ten years ; and, according to the practice of the one profession, a definite answer would have been demanded from the other as to the presence of delusion and the time of its appearance, or of the knowledge of right



and wrong ; and by these standards, these convenient but arbitrary lines, the judgment and decision of the jury would be ordered ; but, according to the other, there would be often an impossibility in affixing any such value to so-called delusion, in determining the period of its passage from a fancy or odd notion into a fixed belief, or in saying when there was a distinct perturbation, supposing it to exist, in the knowledge of right and wrong. The one profession would practically say,—here is a line sharp and hard, and the accused must stand on one side of it or on the other, and must have done so at all periods : we should reply,—the line that you draw is artificial, would include too much, and exclude too much ; or, it has no bearing upon the case at issue ; the man is insane—*i.e.*, of diseased mind, although he may have no delusion that we can discover upon any point or in any direction. We object to the attempt to constitute a test of such kind as the lawyer has employed, because such test must be sometimes faulty, and often inapplicable. If it be argued that it is in conformity with legal methods in regard of other matters to draw and adopt such lines, we can but reply that such other matters may require investigation and revision ; and that it does not make a course of conduct right—which has been shown to be wrong—because it is like some other which it has been found convenient to follow. To reduce the diagnosis of insanity to the discovery of a delusion may be convenient to the lawyer ; but it is untrue to science, unfair to the accused, and disastrous to society. In order to judge of an individual's mental state, we must regard his



family history, his early training or want of it, his habits, personal condition, circumstances, and health ; we must seek in him for the evidences of disease of nervous system, of thought, of feeling, of speech, of gait, of motion, and of conduct, and discover whether or not he differs essentially from those who are sane.

The importance of this view of the matter may be made more apparent by reference to disease of another kind and of another system of organs. Let me take the illustrations of a 'fatty heart' and of 'angina pectoris.' A man falls down suddenly and dies in the street or in his house, and *post mortem* examination reveals the existence of fatty degeneration of the heart, which is held sufficient to explain the occurrence; and the death is, and with propriety, referred to natural causes. Sometimes he may have been subjected to violent emotion, to over-exertion, to prolonged abstinence, to the depressing effects of chloroform, or to other influences which may be regarded as conducive to this end; but in other cases no one of these influences can be detected; there has been nothing 'out of the way,' nothing that could of itself be supposed to exert such a baneful influence upon even an enfeebled heart. Upon inquiry, we may find that ten years ago this man was robust in frame, of unquestioned health and strength; that he had no sense, no warning, then, of the impending evil. Nay, we go further, and assert that, to the best of our knowledge, he was at that time sound; but during those ten years there has been a gradual failure: very slight may have been the indications that it gave at an early period; they may have attracted no attention



from any one—not even from the sufferer himself,—there may have been nothing pointing to the heart; he may have mentioned occasional, uncaused weakness, uneasiness of breathing, or the sense of breathlessness, of tired limbs, and the like; and these may have been referred to the fatigue of business, the sharpness of the air, the slight ascent of the road on which he walked, and all may have passed away; or he may have kept all to himself, and said nothing but cheering words, and strained himself to keep up to his earlier standard of walking, of playing, or of work. But time goes on, and the discomforts become more controlling, and the doctor is called upon, and the patient is told that his ‘heart is weak,’ but that there is ‘nothing organically’ wrong; that there is no ‘valvular disease.’ So it often happens that he is rallied, and puts himself to his neglected exercise, thinking to throw off the weakness, or to call back his strength. He faints, and narrowly escapes with his life; takes more care; his over-exertion explains all, and he will be wiser for the future. He gradually accepts diminished power and a narrower field for work; but some day, perhaps while resting in this even narrowed field, the great crisis comes, and there is an end of the trouble and the pain.

Now, if we were asked *when* did fatty degeneration begin; when was it present to such a degree as to render the man incompetent to climb a mountain, when to run up a hill, when to walk up an ascent, when to walk on the level, when to do this or that, or when to live or when to die, we should have a series of questions, which might sound very clever, but which could



not be answered, because the knowledge that we can gain is not fine enough for the purpose. We may say that it is, or would have been unsafe to have tried this or that, but we cannot affirm that the patient might not have gone through the exercise, and that without distress; but between ten years ago, when the man was healthy, and now, when he is hopelessly enfeebled, is moribund or dead, we can fix no date and say before this his heart was sound or sane, competent to do all that man might wish to do, and after this his heart was unsound or insane, incapable of being trusted to, for him to walk upstairs, incapable of allowing him even to sleep in safety.

The gradual damage to a brain and the insidious malnutrition of a heart have histories, like and unlike: failure in the intellectual and moral life is the outcome of the one; failure in the bodily power and the physical life is the fruit of the other; but each has or may have a slow course and progressive development; each may be disregarded in its earlier stages; each may furnish its occasional symptoms of alarm, and each may break out suddenly, or with apparent suddenness, and do its worst; but the physician knows that the course is, in the majority, slow, and slowly downwards; that the beginning is insidious and past his finding out; and that it would be but scientific arrogance to pretend to say that, during life, he could draw a definite and universally applicable line between varieties of health and actual disease, between fitness and unfitness for work, between competency and incompetency, between safety and danger, between sanity and insanity, between that which would not endanger life and that



which must inevitably be the cause of death. In each particular instance he may, if well informed, advise wisely and well; but he can do this only by regard to all the circumstances and conditions of the particular individual, and by utter disregard of all general and artificial lines, all arbitrary tests, and all and everything that interferes with his individual study of the individual case. His inquiries are based upon the recognition of a variety of symptoms, and we cannot rely upon the presence or absence of this or that particular sign. There is no vital function which is so simple as it sometimes appears to be in books. Nerve and muscle and vessel touch each other at many points, and become intermixed in action; life, healthy and unhealthy life, is complex in its simplest act, and at every point runs up into a mystery; in its most intimate *working* we find the faultiness of our differentia; as we do, indeed, when we analyse to the furthest point the differentia of *structure*; and it is impossible, and may always be impossible, to say in which direction the first sign of failure shall appear.

If the illustration from fatty disease of the heart may serve to explain in some measure the view that we hold with regard to depraved or deteriorated nutrition of the brain, the example of 'angina pectoris,' may elucidate that which we entertain in relation to the more violent outbursts of madness or mania. Silently, slowly progressing up to a certain point, the changes upon which angina pectoris depends go on, and then comes a sudden, frightful pang, which, like a demon, tears the body, as it were, almost asunder, and then departs, 'leaving it half



dead,' but only to return again and again, provoked or unprovoked, until its work is done. Vague threatenings, other and outside symptoms, often misunderstood or disregarded, have been the heralds of its approach; but between the times of attack it is wonderful how calm and free from all physical distress the patient may not only appear, but be. And yet, there is the disease, ready at any moment to break out, and certain to do so at no very distant day; but not even the most skilled auscultator may detect its presence; not even the most experienced physician can say when the next pang shall come. The symptoms, taken together, may justify his diagnosis; but there may be no one pathognomonic sign. If we were to attempt to apply to such a disease any such test as that which is required in the case of insanity, it is obvious that such application would be absurd; for, during it may be long years before the distinctive symptoms had presented themselves, the conditions upon which they depended had been gradually developing, and had rarely failed to give some notice of their presence, and the distinctive features are found to be but an exaggeration of what had been felt before; the lesser degrees were concealed or borne in silence, and the severer have rendered such concealment impossible.

We cannot draw the line between health and disease in such chronic maladies; and yet, according to the legal theory, it must be drawn, and men must be ranged, all of them, on one or the other side. It would appear as if the lawyer regarded the passage from sanity to insanity somewhat in the light of the



“transformation scene” in a pantomime—as a sudden leap taken, it may be, by the pedagogue, with his huge mask and ponderous clothes, and more ponderous manner, into the harlequin with his lithe limbs, bodily contortions, and fantastic fooleries. And he is right, but thus far only, that sometimes the change does seem sudden and astounding, but it is so in seeming only; the clown and harlequin, the pantaloons and columbine, were all there before;—under their flatulent dresses, their painted faces, their solemn voices, and their stately steps, there lay hidden the arms and legs trained to antics as unlike the movements that preceded them as are the ravings of a madman to the calm and dispassionate discourse forced on himself by one who sometimes feels that he is not, what he tries to appear, quite sane. The difference is this, that the pedagogue of the early scene might have been stripped and the harlequin revealed: there we should have had to deal with dress; but we cannot so strip our patients; and, fine as is much of our diagnostic power, it has not yet reached the point that is required of it by the legal tests; and it is worse than absurd to ask questions that can have no answer, and then act upon some principle that is altogether wide of them. I might be asked, Can you physicians, by inspection of the dead body, always say that the mind was either healthy or diseased? and I answer emphatically, No; but I assert that the history of disease during life is obvious enough, and as obvious as that which exists in other classes of morbid change, and in other systems of organs.

Enough has been said to show that the presence or



absence of delusion cannot be regarded as a sufficient test of the presence or absence of insanity, and that the latter is a disease which is often not only wanting in regard of this symptom, but which is recognisable by other and much more important signs; viz., changes in feeling or emotion, and in habitude of mind rather than in the special deviation of its workings; in a loss of power rather than in a perverted action; and in certain evidences—outside the range of mind or *morale*—of altered nervous state, such as paralyses, tremors, and the like. The distinction of insanity from sanity is to be made by regard to *all* the symptoms which the diseased brain may show, and not by the discovery of this or that special change.

The impropriety of attaching the importance which the legal profession has accorded to the presence of delusion is further shown by the fact that delusion, when alleged to be present, varies in its value between such wide extremes, and is such an immeasurable quantity, that it would be hopeless and unjust to constitute it as a test. Shelford defines it as a 'belief of facts which no rational person would have believed' (*loc. cit.*, p. 42); and this, so far as it goes, may be accepted. But who can decide what and how much a 'rational person' may believe? Some people are credulous and some are sceptical; some believe only in themselves, while some place implicit confidence in certain statements that come to them with a special kind of authority. There are 'rational' people who believe many things that others consider absolutely irrational, and which they utterly



discredit. The things, the propositions, the notions of right and wrong, that were received as true by masses of educated persons a hundred years ago, and in this country, are, many of them, rightly or wrongly, utterly repudiated now. There is change in regard of our relationship to credible things; there is addition to and elimination from the sum of them; and we believe that there is growth, and that 'the thoughts of men are widened by the process of the suns.' Some of us believe that we are wiser than our fathers were, and know more than our fathers did; but some think that we are now following only the cunningly devised fables of science, and that we should do well to swallow a few large, ancient, and often swallowed camels, in order that we might so increase our powers of deglutition as not to waste energy in straining at insignificant, and quite recently developed gnats. But with regard to delusions, it is obvious that their range is wide; and that, with respect to some alleged delusions, it is simply impossible to bring them into contact with fact. For example, looking upon those morbid ideas which have to do with the feelings of misery that some lunatics entertain with regard to the course of their own thoughts—that their imaginations, wishes, and purposes, have been wicked to a degree that is beyond that of other human beings—who can say when and at what point this feeling of personal sinfulness is morbid; and when and where it is, according to the belief of a large number of good people, and in conformity with certain printed books, and certain texts of very high authority, but the most hopeful sign of



the commencement of a religious life? Very often, however, some feelings of this kind have passed on into the condition of melancholia, or of mania, or of some other form of declared insanity. Again, a common class of delusion is that with regard to the affections, esteem and confidence of others ; but who in every instance can measure the value of the ground upon which these alleged delusive notions rest? In the presence of any third person, A may treat B with all the kindness and consideration that B requires ; but when alone, there may be an altered manner, a silence, a tone, a look, a gesture, that shall be quite enough to account for the notion that all is not as it used to be ; enough sometimes to convert a so-called delusion into a very real and disagreeable fact. When a man says that he is Julius Cæsar, or possessed of countless millions of money ; when he affirms that his legs are made of glass or his head of butter ; that he is the Devil impersonate, or the Holy Trinity, there can be no hesitation as to the mode of treatment (both social and individual) that he requires. If he really believe his statements, he has a delusion, and is undoubtedly insane ; but when his idea or delusion, unreasonable as it appears to others, is, that his wife is unfaithful to him, or his son unkind, or that some friends have altered their feelings to him, or have conspired against him, and that these changes have occurred since his condition, it may be, has changed from prosperity to adversity, who can tell how much truth there may be in all these assertions? or, if no real truth, how much there may have been which should justify, in one depressed by cir-



cumstances, the ideas and the feelings he had entertained? The tendency to think of himself as an exception to general rules is common enough in the lunatic, and may sometimes be regarded as furnishing evidence of delusion, as to either matters of fact, or of moral obligation. But in this tendency we recognise only an exaggeration of a very common, although unacknowledged, persuasion of many who are indisputably responsible and sane. There is a strong tendency in the majority of mankind to resent, in feeling, the dogma of being under subjection to general laws; and there are perhaps but very few who do not think themselves exceptions to some one or more of the most common rules which they would hold to be binding upon others.

I do not for a moment wish to underrate the occasional value of delusion as an indication of insanity; but I reaffirm that it is not always present, and that, when present, its value, as a sign, is of very variable amount, and may be nothing. The presence of a distinct and demonstrable delusion, has all the value that the lawyer would assign to it, but the absence of delusion affords no evidence that the patient is not insane; and much that may, by some, be regarded as delusion, may be so far warranted by facts known only to the patient, that it is impossible for anyone but himself to appreciate its weight, impossible for any one to estimate its diagnostic value.



## II.

I pass now to the second part of my subject, viz., the legal test of insanity that is employed when one accused of crime is defended on the ground of his being insane. On this point the legal dogma is very explicit, and consists in the knowledge of right and wrong, and of the consequences of an act or acts.

Referring to the work of Sir Oldnall Russell,\* it is easy to discover the recognised doctrine of the court of justice. I find the following illustrative examples. Lord Ferrers was hung for murder, it having been urged 'that it was sufficient if the party had such possession of reason as enabled him to comprehend the nature of his actions and discriminate between moral good and evil' (p. 15). Parkes, for entering the French service, was condemned, although weak from a child, because it could not be shown that he 'did not really know right from wrong.' Bowler, an epileptic maniac and melancholiac, was sentenced on the same grounds. In the case of the *King v. Offord*, Lord Lyndhurst said the question was, 'did he know that he was committing an offence against the laws of God and Nature.' Again, in the prosecution of Oxford, Lord Denman said, 'If some controlling disease was, in truth, the acting power within him which he could not resist, then he will

\* *A Treatise on Crimes and Misdemeanours*, 4th edition, by C. S. Greaves, Q.C., 1865.



not be responsible;' but the same learned judge goes on to say to the jury, the question is 'whether he was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing; or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime' (p. 17). Still further, let me quote the questions put by the Lords to the learned judges on the acquittal of M'Naghten.

'Q. 1. What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, when, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit?

'A. 1. Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by



which expression we understand your lordships to mean the law of the land.

‘Q. 2. What are the proper questions to be submitted to the jury where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?’

‘Q. 3. In what terms ought the question to be left to the jury as to the prisoner’s state of mind at the time when the act was committed?’

‘A. 2 and 3. As these two questions appear to us to be more conveniently answered together, we submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity it must be clearly proved that, at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.’

It is not necessary for me to quote further evidence in explanation of this legal dogma. From the time when it was first uttered until now, learned judges have repeated these words, or words to the same effect; and have done so in spite of protest from men of the highest scientific reputation, and in spite of the fact that year by year there has been an



increasing number of instances in which this dogma has been laid down before the jury, and its effect undone by the very same judges in reply to appeals for direction from the Home Secretary.

With regard to this test, I may say, and most emphatically, that it is utterly untrustworthy, because untrue to the obvious facts of Nature. There are thousands of undoubted lunatics in our asylums and elsewhere who know the difference between right and wrong as well as we do; who know the consequences of their actions as well as we do; and there are among these a large number whose pain and torment—whose actual disease, indeed—exists in a morbid exaggeration of the sense of right and wrong as applied to themselves, and to their conduct in the present and the past.

It does not seem to me that a very obvious distinction has, in our courts of law, been always drawn between two things which differ widely; viz., the presence and condition of the moral sense in itself, and the faculty for its correct and special application to special acts. There may be the keenest sense of right and wrong in the general; the very strongest *feeling* with regard to the moral obligation underlying such sense; the most earnest wish to do the one and to avoid the other; and yet an utter perversion of *idea* with regard to particular courses of conduct. There may, on the other hand, be a callousness and general indifference on 'the weightier matters of the law'—*i.e.*, there may be no general exaltation of the sense; while there is a positively morbid exaggeration of self-reproach in regard of petty details of conduct, which



may be spoken of as 'the tithes of mint, anise, and cummin.' Sane people differ widely from one another in both directions. The general moral sense so keen in some, is but quite painlessly sharp in others; and the special applications of such moral sense as sane people possess lead them often into eccentricities, punctilious performances, or practical dishonesty. It would seem, indeed, to be sometimes true that sane people torment themselves with searching tests on worthless matters; attach importance to this observance or to that; lay down for themselves and others rules which they cannot keep; sniff out the wickedness of others when their conduct fails to keep the line that they have drawn; and yet these very folks lie and cheat, and do shabby and dirty things which chance to fall outside the charmed circle that they have so richly cultivated. There are others—and 'all honourable men,' as well as sane—whose moral sense is no burden to them; who walk or even canter through life, never troubled by a suspicion of themselves; never over anxious about general principles; dealing leniently with those who err, wondering at the scrupulous, and only vexed when roughly taken to task about some really unconsidered 'impropriety.' Differences like these, with which all are familiar in the sane, are to be encountered in those who are insane. We find lunatics ranging from the one to the other extreme, in regard of the attention which they pay to their own moral sense, and in respect of the acuteness of that sense. There are to be found, at the lowest level, those in whom the notion of right and wrong seems to be blunted or extinguished, who do shameful



things, and utter shameful words without one atom of the sense of shame; there are others whose moral sense of shame is so perverted that all which sane people reverence as right they openly ignore, and much that is by sane people held as wrong they defend and do. But, there are others, undoubtedly insane, suffering from real mental disease, who present as strong a contrast to them as it is possible to find in human nature—those whose moral sense has been quickened into morbid activity, and who torment themselves with its application to their actions and words; and, not only so, but with regard to their thoughts and feelings and motives in the present; and still further, with regard to their conduct or wishes or motives ten, twenty, or thirty years ago. Their sense of moral obligation is morbidly, sometimes almost insufferably keen; and their malady consists in this exaggerated intensity of that healthy function.

With regard to the detailed application of the sense of right and wrong to particular acts, words, thoughts, motives, or feelings, there are endless diversities to be found in lunatics; some troubles may be but the result of the exaggeration of the moral sense—*i.e.* they may be in conformity, in regard of kind, with the persuasions of those who are sane. The lunatic is troubled to a degree that the sane man would not be with regard to this or that; but the sane man would agree with the insane that he was right in his apprehension of the nature or quality of his conduct, while he would differ from him in his appreciation of its quantitative value. That which is morbid is the exaggeration of the sense of right



and wrong, and not its absence. Those who have seen much of lunacy know how terrible is this morbid awakening of conscience in those whose brains have become diseased—those who, after years of apparently spotless life, often become the prey of tormenting reproaches, touching their past thoughts and acts, about which sane people would never feel a trouble or a pang.

Between the two extremes—*i.e.*, between the lunatic who has lost his moral sense, and the lunatic whose torment exists in its exaggeration—there are to be found illustrations of every degree of change, both in quantity and quality; and with such facts before us—facts which any one might verify for himself by a visit to any one of our large lunatic asylums, it is simply monstrous that the ‘knowledge of the difference between right and wrong’ should be made the test of insanity. The lunatic knows the difference as well as we do, and often feels it much more keenly; and it is this feeling which often drives him to despair or to some fearful act, which the sane man, with easier conscience, would have avoided.

This leads me to say a few words upon the subject of morbid ‘impulse.’ I take it that almost every sane person has, at some time or another, felt disposed, moved, or impelled to do or say something which he has avoided either doing or saying by a moment’s reflection. Further, that sometimes the impulse has been of only momentary duration, and easily set aside; but that sometimes it has lasted longer, and has had to be overcome by an effort and an act. It may be that the disposition was to jump



off a bridge, to run against an express train, to drink a liniment marked in red letters 'poison,' to knock down some one, or to break this or that which he knew to be of value. Now, with regard to such momentary impulses, those who have felt them will acknowledge that they often are quite unconsidered, have no relation to the knowledge of, or facts of, right and wrong, and that the impulse has sprung up suddenly, and often as the result of some such impression on the senses as those I have mentioned. Again, is it not well known that people reputedly sane do sometimes act upon impulses of this kind, and do or say things in an unconsidered manner, or, as we often say, 'impulsive' manner, which they afterwards regret, and that deeply, but which they may repeat and regret, time after time, without being able to explain their conduct to others or to themselves? Similar impulses occur in those who are the subjects of disease; and they not unfrequently result in suicide, or homicide, or some other crime. An unstable condition of the nervous centres allows action upon impulse, starting from sensation, which a better state of nerve-nutrition would have enabled the individual to resist; but it is difficult to draw the line between the sane and insane in such cases, and it is quite impossible to accept the legal definition of a knowledge between right and wrong, and of the consequences of actions. The knowledge may be as accurate in the insane as in the sane; the desire to do the right and avoid the wrong may be as keen in the one as in the other, but the power to resist is absent in the one and present in the other. In that



want of power lies the true evidence and fact of disordered brain, and not in the knowledge which may be present as to this or that. The lunatic may weep, with bitter regret, over that which he has done; the sane man often says nothing, or only laughs at his escape from a danger, which nevertheless was very real. I admit that some lunatics, after acting upon impulse of the kind now mentioned, show no regret, no sense of the nature of their conduct; but I must affirm that there are others whose conduct has been of this impulsive kind, who can give no explanation of its motives, and who do repent of their misdeeds with a bitterness that can find no expression in words. Again, the lunatic often *knows* well the ideas entertained by the sane as to so-called right and wrong; but he *feels* that he is an exception to the rule, and would rather be regarded as criminal than of unsound mind. (See page 30.)

Under such circumstances, it is worse than idle—it is scientifically and morally wrong—to apply the legal test of knowledge; each case can only be judged upon its individual merits. All those varied considerations, to which I have already alluded, which lead the physician to a diagnosis of the condition of his patient, must be taken into the account before he or any one can pronounce upon the sanity or insanity of the accused; or upon the presence and degree of the responsibility which attaches to the act he has committed. Let me reiterate that, it is not the presence or absence of knowledge about actions, but the presence or absence of power to do them or resist them which is a sign of sanity or insanity of mind.



## III.

I now approach the question of mental *capacity* in its legal and medical aspects, and with regard to it will adopt the method already followed, of in the first place stating the legal dogmata so far as I can gather them, and then of examining their scientific value. The question may be stated thus: What is the test of mental unsoundness to be applied to individuals with regard to whom insanity is urged, for the purpose of either, on the one hand, depriving them of the power or relieving them of the burden of the disposition of property, or, on the other hand, of setting aside such dispositions, testamentary or other, that they may have made? With regard to many persons, there may be no difficulty whatever. The sanity of the majority is unquestioned; the insanity of others is undoubted. But such cases rarely become the objects of legal inquiry. It is the doubtful, the intermediate cases, that give rise to questioning and dispute; and by such cases the nature, criteria, and capacity of those who are recognised as 'partially insane' become the objects for investigation.

What are the tests of partial insanity? and what are the legal relationships of the so-called 'partially insane'?

By the terms they have used and the actions they have taken, both professions—the legal and the medical—have admitted generally the existence of partial



insanity; and it is our business to inquire whether they are right, and how far they are right.

Leonard Shelford says: 'A lunatic is properly one who has lucid intervals, sometimes enjoying his senses, and sometimes not' (p. 4, *op. cit.*) Again: 'The law recognises partial insanity; and in civil cases this partial insanity, if existing at the time the act is done, if there be no clear lucid interval, invalidates the act, though not directly connected with the act itself; but in criminal acts it does not excuse from responsibility, unless the insanity is proved to be the very cause of the act' (p. 44). The Lord Chief Justice Cockburn, in the case of *Banks v. Goodfellow*, July 6th, 1870,\* gives, as the judgment of the Court, the following statement:—'If the testator, at the time of making the will, was of capacity to make the will, as defined by the Chief Justice, the existence of mental disease, if latent, so as to leave him free from the consciousness and influence of delusion, there having been a total absence of all connexion between the delusion and the will, would not overthrow the will. . . . We are of opinion that a jury should be told . . . that the existence of a delusion compatible with the retention of the general powers and faculties of the mind will not be sufficient to overthrow the will, unless it were such as was calculated to influence the testator in making it.'

Lord Hale, in speaking of partial insanity, and of those who were melancholic, said that those 'who, for the most part, discover their defect in excessive griefs and fears, are yet not wholly destitute of the use

\* *Law Reports, Court of Queen's Bench*, vol. v., p. 571.



of reason . . . . and this partial insanity seems not to excuse them in the committing of any capital offence.' \*

These quotations are, I think, sufficient to show—  
1. That partial insanity is recognised by the law; 2. That the responsibility, as well as capacity, of the partially insane person varies; 3. That the presence or degree of responsibility is subject to two different kind of tests—(a) the quality of the act performed, viz., the civil or criminal character of the act in dispute, and (b) the discoverable connexion between the alleged proof of insanity and the particular act in question; and 4. That in the one class of case—the civil—the relation between delusion and the act is allowed to exert some influence; whereas in the other—the criminal—it is ignored.

This is not the time, nor perhaps am I the proper person, to discuss the logical or equitable character of some of these distinctions. It is not my purpose to enter upon the ethical question of the difference between capacity for civil and responsibility for criminal acts, although I think it would not be wrong in me to state my own conviction that any form of disease which should be allowed to deprive a man of liberty and disposing power in regard to property, should be admitted to excuse him from the responsibility for a criminal act. It seems to me illogical that a man should, for example, by reason of disease, be prevented from excluding from the benefits of his will a relative who has been unkind to him, and whom he may sincerely hate; and that he should yet be liable

\* Sir W. O. Russell, *op. cit.* p. 14.



for penalties if he knocked down that obnoxious relative when he planned to come into his presence for the purpose of cajoling or intimidating him into doing this or that. Such person is deprived of the power of dealing with his relative by fair means, and is punished when he adopts the foul. If he be punishable for the one, he ought to be allowed to exercise the other power. If, by reason of disease, he be deprived of the latter, he ought to be held, by reason of disease, to be irresponsible for the former.

But, to return to the first point mentioned—viz. the existence of so-called ‘partial insanity’—let me ask what is meant by this expression, and how far the expression is warranted by facts. I have already quoted the legal dogma that the term ‘lunatic means every insane person, and every person being an idiot or lunatic of unsound mind;’\* and upon this point we, as medical practitioners, feel a very great difficulty. There are many diseases of the brain which involve the mental functions; impair the memory; weaken the judgment; diminish the capacity for exertion; blunt or exaggerate the emotions, or alter the capacity for their control; and interfere with the faculty of expression by either spoken or written word; and yet it could not be said that such persons were either lunatic or, in its popular acceptation, of unsound mind. Their brains are weakened or diseased, but they fall short of the legal test of insanity. They exhibit no delusion; they know the difference between right and wrong; they are aware of the consequences of their actions; and they are quite capable of

\* Shelford, p. 6; VIII. and IX. Vict., c. 100, s. 114; c. 126, s. 84.



doing certain things, but, by reason of disease, are quite incapable of others. There is a definite amount of mental exertion that they may make, not only without injury, but with advantage to themselves; but their capacity is limited, and there would be danger in their attempts to pass beyond the limits which their disease has fixed. On certain simple matters, such as the ordering of their dinners or the disposal of some property in the funds to near relatives, they may be as clear in thought and as correct in intention as any sane person in this room; but, supposing that, outside his own small and simple affairs, one thus afflicted, has the misfortune to be executor to a large estate, trustee of a bank, or to be in some way responsible for the complicated affairs of others, it might be unsafe, and indeed perilous to him, to attempt to enter upon their consideration, and also absolutely ruinous to others for his judgment to have been made the basis of action. Now it sometimes happens that such cases become the subjects of legal inquiry; and I have heard very strong expressions used by learned counsel with regard to the qualifications and *morale* of a physician who should say that a man was quite fit for the one duty and quite unfit for the other. It seems to be impossible, according to the present state of the law, to relieve a man from responsibility without stating that he is of 'unsound mind;' and such relief has sometimes been obtained by such enforced statement, but it has been obtained in spite of the protest of the physician as to the phrase, and for the simple purpose of securing the patient against work for



which he was obviously incompetent, and the attempt to enter upon which would have endangered reason, or life, or both. But the injustice that may attend such most sensible and justifiable relief from work is great; for the man is thereby deprived, or may be deprived, of the power of doing anything which shall have a legal force and sanction. In order to save a man with diseased heart, let me say, for the sake of example and analogy, from running a three-mile race or climbing a mountain, the physician has to certify that he is of unsound heart, and this should be understood to mean that he is incapable of any act whatever; and, if the physician has written such certificate, it may turn out hereafter that his judgment, his motives, and sometimes even his word, are called in question, because he allowed such a person to walk gently on the level, or even to rise from bed. When cases of this sort arise—and they have often arisen, and are still likely to do so—it is obvious that no general line can be drawn, nor test adopted; but that each case must be judged by itself, and upon its own merits; and that it would be scientifically absurd and morally wrong to deprive a man of all power because he is deprived by disease of some. This is one of the simplest questions, medically considered, which can require the advice of the physician; but it is one often fraught with much difficulty, in consequence of the legal requirements for its management; and it becomes not unfrequently the subject of protracted legal investigation.

But the question of so-called ‘partial insanity’ often takes another form. A man is said to have a



delusion upon one point, and to be sane upon all others; and he is held responsible for any criminal act; responsible for civil acts which have no direct relation to his delusion; and irresponsible for those which have such relation. Upon the last point, I take it, we do not differ from the legal profession; but upon each of the others we must join issue, because of the view we entertain with regard to the relation of this partial insanity or monomania.

These, I think, we may lay down as general principles of medical science: 1. That, except as the result of a local injury, the man who has "anything the matter with him" is of unsound health; 2. That the most narrowly localised expressions of disease are often but the indicia of wide-spread or deeply rooted constitutional disorder; 3. That there is no constant relation between the amount of local mischief and the degree of general disturbance; and 4. That, although we may be able to understand and express the relations between them in some instances, we are unable to account for them in others. The phenomena of mental disturbance form no exception to, but rather examples of, the truth of these four general propositions: 1. The man who has any insane delusion, be it ever so small or harmless, is a man of unsound mind; 2. He whose apparent mental disturbance is limited within a narrow field, exhibits so frequently the evidence of other and wider ranges of nervous malady—sometimes in intellectual or moral function, sometimes in those of sensation or of emotion, sometimes in the state of his physical health—that we are compelled to regard the



man as of unsound mind and the subject of grave disease ; 3, Sometimes we may observe a distinct and direct relation between the often expressed delusion and the words or acts of the individual ; but 4. Often no such relation can be discovered by the operation of our own healthy minds ; and yet we are warranted in inferring, from the facts that come before us, that there was a relation which no sane mind could have anticipated.

This being the case, we demur to the dogma that I have quoted, of the relation between delusion and the act under question. We say that the man's mind is unsound, and that it is sometimes impossible to determine whether or no that unsoundness bore directly or indirectly upon his conduct ; and that the principle of basing the validity of a document or disposition upon the discovery of such relationship is unscientific and unjust. It is an insane mind with which we have to deal, and it would be unscientific and absurd to apply to that insane mind the laws of thought which we recognise in the sane. A healthy mind cannot see or foresee the relation which may exist in an unhealthy mind between a delusion—a monomania—and an act ; and yet it may exist, and have been the cause of that act. If we admit the existence of unsoundness of mind to any degree—and, *à fortiori*, to such degree as to give rise to a definite delusion—it is most unphilosophical to apply, in their entirety, to that mind the laws which regulate our own thoughts and motives of appreciable relationship between this thought and that. It is admitting the existence of a sound and unsound mind



in the same individual, and using the former to explain the movements of the latter. I use the term 'individual' advisedly, because I do not think that we can in such way, or in any such way as the legal doctrine admits and sanctions, recognise the mind of a man as susceptible of division and subdivision.

The view that I take of so-called 'partial insanity' may perhaps be rendered more apparent by an illustration or analogy from disease of the heart. I select a well known malady, aortic regurgitation—the failure of one or more aortic valves to close, and by their closure to prevent the reflux of blood from the great vessels into the left ventricle. This condition may exist alone; that is to say, the muscular substance of the heart may be healthy; the action of the other three sets of valves may be perfect; the pulse may be regular; the person so circumstanced may be unaware of his malady; he may feel no discomfort of any kind; he may live to the ordinary term of life; he may die of some affection totally unconnected with his heart disease. The valvular state may be recognised by its special sound, or by the condition of the pulse; but it often happens that it is discovered accidentally by the physician in examining for the purpose of life assurance, or on account of some ailment quite unconnected with the heart, such as dyspepsia or a common 'cold,' which may chance to bring the individual under observation. There is a partial unsoundness or insanity of the heart, the effects of which may vary widely; they may be *nil*, or they may be such as to render life most miserable, inducing in some attacks of anginal suffering, in others



dropsy, in others hæmorrhage. We may explain some of these consequences; we may foresee them; may guard against certain sources of danger; may relieve some forms of distress. But although the individual with this aortic mischief may live to fourscore years, his life is not insurable for an hour. It is just one of those forms of heart-disease which frequently terminate suddenly, unexpectedly, and without apparent provocation. At any moment the machinery may break down; there is a sudden faintness, a gasp, and all is over. If we were questioned about such case, and the capacities and probable future of the individual, we might reply: 'Although he seems well, there is a definite partial disease of the heart. It may lead to this or that; it may be followed by a long series of troubles that shall wear life out; it may go on for many years, and occasion no inconvenience, or it may be fatal at any moment; and why it should be so we cannot always tell.' Sometimes we may trace the connection between the chronic or sudden troubles that arise, but often they are inexplicable; and I do not know that it has ever been distinctly shown why a mechanical impediment of this particular kind, which is borne so well for many years, in spite of work and carelessness, should sometimes come to so abrupt an end.

The man with monomania is somewhat similarly placed. For many years he may go on performing his various mental functions, and filling his place in business or society; he may, to the ordinary observer, display nothing that is wrong; but still there lies the disease, ready to declare itself at any moment,



sometimes in a manner that may be connected with the particular delusion, but as often in some other and unexplained direction. The heart is partially unsound in the one case, the brain is partially unsound in the other; but the man is diseased or unsound in both instances, and has not, and cannot have, the full capacities or responsibilities of one who is free from either ailment. The simple fact of the partiality or limitation of the evil is of little moment in estimating the capacity of the patient. With regard to the one, life is uncertain at every turn; and, with regard to the other, reason is insecure at every moment. And so subtle are the relations between each malady and its possible results, that it would be presumption to pretend to predict their course; and it would be monstrous to assert either the presence or absence of direct relation between the malady and certain events that may have happened. Sometimes the relation may be plain enough, but often it is such that we must, with regard to it, confess our present ignorance. The doctrine, the legal position with regard to "partial insanity," requires revision, for it is out of harmony with what we know of disease.

I have thus endeavoured to show that the legal tests of insanity are at variance with the facts of science: 1. That the general notion of the value of delusion is unsatisfactory, because delusion may be absent, and because, when present, its value varies from extreme to extreme; 2. That the test of the knowledge of right and wrong, and of the consequences of actions, is again untrustworthy, because it may exist in the lunatic, and exist in an exaggerated



degree, and because its application to particular acts is of character varying in the insane as it does in the sane; 3. That the doctrine with regard to partial insanity is untenable, because there is no such thing as a sound and unsound mind coexisting in the same individual, and because it is impossible to determine the limits of disturbance which may be occasioned by what we term a localised or partial ailment.

The final object of this paper is to propose some mode of remedying the evils which at present exist; and that which occurs to me to promise the best results is to inaugurate a conference between the legal and medical professions upon this matter, with the purpose of taking such steps as may be thought most conducive to the end in view. It is not my wish to forestall anything that such conference might adopt as desirable; but I may be allowed to suggest that the following points should be considered:—

1. The arrival at a better definition of insanity generally.
2. A revision of the tests of insanity; (*a*) that based upon the existence of delusion; (*b*) that turning upon the knowledge of right and wrong, and of the consequences of actions.
3. An examination, in all its bearings, of the doctrines of partial insanity, and its responsibilities.
4. A revision of the distinction between responsibility for criminal acts and capacity for civil acts.
5. An inquiry into the mode of dealing with those whose mental condition is impaired, but who are not, in the popular sense of the word, “insane.”
6. An examination of the possibility of dealing



with those bordering upon insanity, as at present recognised.

7. A determination of the mode to be adopted in dealing with cases, both civil and criminal, when insanity is alleged as a plea of innocence, or as a bar to disposing power.

8. The possibility and desirability of doing away with the present mode of investigation in a court of law; viz., by the calling of skilled witnesses on different sides.

9. The possibility or desirability of a court or of a commission to report on all cases of impending legislative inquiry, in regard of those who are alleged to be insane.

I cannot but believe that, if the legal and medical professions were to meet upon this matter in a friendly manner, and with a common object—not as they do when they are called upon to determine the merits of this or that particular case which may or might be brought before them, but to aim at some general principles of consideration and of action which should be applicable to all cases—the result would be the discovery of some mode of remedying or of diminishing the evils which now exist, and of enabling them in the future to attain in practice that which is the common object set before each of them in theory—viz., the discovery of truth.



From the Author

