The verdict of 'suicide whilst temporarily insane' : a legal contradiction / by R. Henslowe Wellington.

THE VERDICT

OF

"Suicide whilst Temporarily Insane:"

A LEGAL CONTRADICTION.

BY

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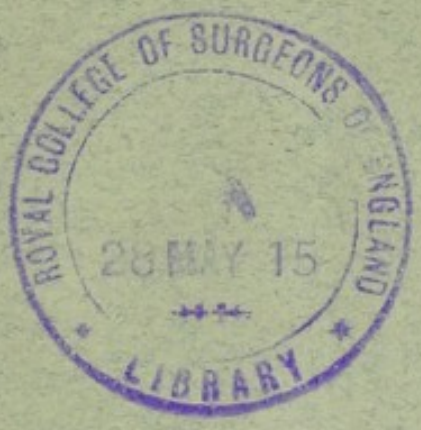

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"SUICIDE WHILST TEMPORARILY INSANE:"

A LEGAL CONTRADICTION.*

THE teaching of the Pagan philosophers was that "death is a law and not a punishment," and not, as the fathers of Christianity taught, that it was "a penal infliction introduced into the world on account of the sin of Adam." The Pagan philosophers worked to abolish the terrors of death, whilst the work of "the Catholic priests has been to enhance the fears and horrors and make it as revolting and appalling as possible," and to escape such was only to be accomplished by subjection to their rule and government.

The fear of death has ever been one of the many nuclei around which superstition has crystallised. Especially during the Middle Ages did superstitions crystallise in the form of "visions of Purgatory and Hell, and conflicts with visible demons;—like those mothers who govern their children by persuading them that the dark is crowded with spectres that will seize the disobedient, and who often succeed in creating an association of ideas which the adult man is unable altogether to dissolve." The Catholic priests resolved to base their power upon the nerves, and, as they long exercised an absolute control over education, literature and art, they succeeded in completely reversing the teaching of ancient philosophy, and in making the terrors of death, for centuries, the nightmare of the imagination.

The great difference between the teaching of the two schools, the classical and the Catholic, is seen in the position each took as regards suicide. Pythagoras forbade men "to depart from their guard or station

* A paper read before the Medico-Legal Society, London, June 14th, 1904.

in life without the order of their commander, *i.e.*, of God"; Aristotle, on the other hand, was against it as an injury to the State. The list of Greek suicides is not a long one, but in Rome it assumed a greater prominence, though endurance of suffering was once the supreme ideal.

Virgil depicted the future state of the suicide as a miserable picture; Cicero, though averse to suicide, praised that of Cato as "an occasion such as to constitute a divine call to leave life" (*Tusc. I.*); Plotinus and Porphyry argued strongly against all suicide, the latter saying that Plotinus dissuaded him from it.

A general approval of suicide floated down through most of the schools of philosophy, and, when a society once learns to tolerate it, the deed, in ceasing to be disgraceful, loses much of its actual criminality, for those who are most firmly convinced that the stigma and suffering it now brings upon the family of the deceased do not constitute its entire guilt will readily acknowledge that they greatly aggravate it. "But it was in the Roman Empire and among the Roman stoics that suicide assumed its greatest prominence, and its philosophy was most fully elaborated." From an early period self-immolation was in some circumstances a religious rite, being probably a lingering remnant of the custom of human sacrifices,* and towards the closing days of Paganism many influences conspired in the same direction. The example of Cato had become the ideal of the stoics. The indifference to death produced by the great multiplication of gladiatorial shows, the many instances of barbarian captives who, sooner than slay their fellow-countrymen or minister to the pleasures of their conquerors, plunged their lances into their own necks, or found other and still more horrible roads to freedom,† the custom of compelling political prisoners to execute their own sentence, and, more than all, the capricious and atrocious tyranny of the Cæsars had raised suicide into an extraordinary prominence.

The idea of suicide as an "*euthanasia*" and a guard against old age is not limited to philosophical treatises; it has been many times practised. The doctrine of suicide was indeed the culminating point of Roman stoicism; stoicism taught men to hope little, but to fear nothing; it endeavoured to divest death of all terror and the ending of all suffering.

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* Sir Cornewall Lewis: "On the Credibility of Early Roman History," Vol. II., p. 430.

† *Vide* some examples of this in Seneca, Ep. lxx.

Christian theologians carried their doctrine of the sanctity of human life to such a point that they maintained dogmatically that a man who destroys his own life has committed a crime similar both in kind and magnitude to that of an ordinary murderer.

There were, however, two forms of suicide which were regarded in the early Church with some tolerance or hesitation. The following became the theological doctrine on the subject: "*Est vere homicida et reus homicidii qui se interficiendo innocentum hominem interfecerit.*" (Lisle, *Du Suicide*, p. 400). (He is indeed a murderer, and a party to murder, who, by destroying himself, shall have destroyed a guiltless man.).

During the frenzy excited by persecution, and under the influence of the belief that martyrdom effaced in a moment the sins of a life and introduced the sufferer at once into celestial joys, it was not uncommon for men, in a transport of enthusiasm, to rush before the Pagan judges imploring or provoking martyrdom. The councils of the Church condemned them. A more serious difficulty arose about Christian women who committed suicide to guard their chastity when menaced by the infamous sentence of their persecutors, or more frequently by the lust of emperors or by barbarian invaders. St. Ambrose rather timidly, and St. Jerome more strongly, commended it, but St. Augustine devoted an elaborate examination to the subject, and, while expressing his pitying admiration for the virgin-suicide, decidedly condemned their act. His opinion of the absolute sinfulness of suicide has since been generally adopted by the Catholic theologians.

Direct and deliberate suicide, which occupies so prominent a place in the moral history of antiquity, almost absolutely disappeared *within* the Church; but beyond its pale the Circumcelliones,* in the fourth century, constituted themselves the apostles of death. Assembling in hundreds—St. Augustine says even in thousands—they leaped with paroxysms of frantic joy from the brows of overhanging cliffs, till the rocks below were reddened with their blood. At a much later period we find among the

* A sect of Donatist Christians in Africa, so called because they rambled from one town to another, professing to be public reformers and redressers of grievances. They manumitted slaves without their masters' leave, forgave debts which were none of their own, and committed a great many other unwarrantable acts, and naturally were not long in falling into disrepute.

Albigenses* a practice, known by the name of "*endura*," of accelerating death, in the case of dangerous illness, by fasting, and sometimes by bleeding. The Jews, strung to madness by the persecution of the Catholics, furnish the most numerous examples of suicide during the Middle Ages. A multitude perished by their own hands, to avoid torture, in France in 1095; five hundred on a single occasion in York; five hundred in 1320, when besieged by the Shepherds.

The old Pagan legislation on suicide remained unaltered in the Theodosian and Justinian Codes; but a Council of Arles, in the fifth century, having pronounced suicide to be the effect of diabolical inspiration, a Council of Bragues (Braga), in the following century, ordained that no religious rites should be celebrated at the tomb of the culprit and that no mass should be said for his soul; and these provisions were gradually introduced into the laws of the barbarians and of Charlemagne.

A melancholy leading to desperation, and known to theologians under the name of "*acedia*" (sloth), was not uncommon in monasteries, and most of the recorded instances of mediæval suicides in Catholicism were by monks and were due either to a desire to escape the world, or through despair at inability to quell the propensities of the body, or insanity produced by their mode of life and dread of surrounding demons, or bitterness of hopeless love, or the derangement that follows extreme austerity. On the other hand, it is probable that monasteries, by providing a refuge for the disappointed and broken-hearted, have prevented more suicides than they have caused, and that, during the whole period of Catholic ascendency, the act was more rare than before or after. Under the empire of Catholicism and Mohammedanism, suicide, during many centuries, almost absolutely ceased in all the civilised, active and progressive parts of mankind. When we recollect how warmly it was applauded, or how faintly it was condemned, in the civilisation of Greece and Rome; when we remember, too, that there was scarcely a barbarous tribe, from Denmark to Spain, who did not habitually practise it, we may realise the complete revolution which was effected in this sphere by the influence of Christianity. The Reformation does not seem to have had any immediate effect in multi-

* A party of reformers who separated from the Church of Rome in the twelfth century, and were ruthlessly persecuted; so called from *Albigeois*, a small territory round Albi, a town of Languedoc, in France, where they resided.

plying suicide, for Protestants and Catholics held, with equal intensity, the religious sentiments which are most fitted to prevent it.

"Suicide, in modern times, is almost always found to have sprung either from absolute insanity; from diseases which, though not amounting to insanity, are yet sufficient to discolour our judgments; or from that last excess of sorrow, where resignation and hope are both extinct. The advance of religious scepticism and the relaxation of religious discipline have weakened and sometimes destroyed the horror of suicide; and the habits of self-assertion, the eager and restless ambitions which political liberty, intellectual activity, and manufacturing enterprise, all in their different ways conspire to foster, while they are the very principles and conditions of the progress of our age, render the virtue of content in all its forms extremely rare, and are peculiarly unpropitious to the formation of that spirit of humble and submissive resignation which alone can mitigate the agony of hopeless suffering."*

We have now to analyse the verdict of "suicide whilst temporarily insane," and will consider :—

I. The origin of the word "suicide."
II. The strict legal meaning of the word.
III. That the suicide must be *compos mentis*.
IV. That *felo de se* and suicide are one and the same.
V. The effects of the two verdicts.

I. The word "suicide" does not appear in the Bible, nor in English literature previous to the reign of Charles II. (1660–1685). In 1644 was published with the works of John Donne, Dean of St. Paul's, who died in 1631, "A Declaration on that Paradox or Thesis that self-homicide is not so naturally sin that it may never be otherwise." The word "suicide" does not occur in this work.† It seems to have been suggested by the queer words *suist*, a selfish man, and *suicism*, selfishness, which had been coined at an earlier date, and were used by Whitlock in an essay entitled "The Grand Schismatic, or Suist Anatomised," in his Zootomia, 1654. It could not have been derived from the Latin, as the compound word "*suicidium*," from which many attempt to trace it, is not to be

1644.

1654.

* Lecky: "History of European Morals."

† The Dean, on his deathbed, commanded his son neither to publish nor destroy this defence of suicide, which was written by him in his youth.

found in any Latin dictionary or glossary. Philips, in his "New World
1671. of Words," third edition, 1671, says: "Nor less to be exploded is the word 'suicide,' which may as well seem to participate of *sus*, a sow, as of the pronoun *sui*." It does not appear in Hawkins' "Pleas of
1716. the Crown," published in 1716, for he uses the term "self-murder."

But it is used for the first time, as far as I can ascertain, in a legal
1736. work in 1736, as we find it in Hales' "Pleas of the Crown," edited by S. Emlyn in 1736, just sixty years after Hales' death. It is also found in the first edition of Blackstone's "Commentaries" in 1769 (Book IV., c. 14 (R)).

1749. Turning our attention for a short time to the French language, we find that Montesquieu, in his "Esprit des Lois," uses the expression "*l'homicide de soi-même*," though the translator into English speaks of "suicide". (both the French and the English editions appeared in 1749). The
1771. "Dictionnaire Universel," published in 1771, says that the word "suicide" was introduced into the French language by the Abbé Desfontaines in 1738. It is clearly seen, then, that the word is of English origin, though Skeat, in his etymological dictionary, 1882, says "the word was really coined in England, but on a French model." Voltaire appears somewhat jealous in the matter, for we find him, in his "Commentary of Montesquieu's 'Esprit des Lois,'" to say: "The English always have a grudge against the French; they took from them, not only Calais, but all the words of their language, and their maladies, and their methods, and finally claimed the exclusive distinction of committing suicide. But if we wished to parry this boast, we could prove that in the year 1764 alone we have counted in Paris more than fifty persons who have committed suicide. We could tell them that each year there are a dozen cases of suicide in Geneva, which only contains 20,000 souls; whilst the newspapers do not record more suicides in London, which comprises about 700,000 (people suffering from diseases of the spleen)."

Here Voltaire claims the right of committing suicide rather than the origin of the word, though he certainly says we took all the words of our language from them; he uses the word "suicide" himself, and attributes the act to disease of the spleen.

Trench, in his "English Past and Present," says "we had the words 'homi-cide,' 'patri-cide,' 'matri-cide,' 'fratri-cide' already in use; and 'sui-cide' was coined by analogy with these, which accounts for the

whole matter simply enough. The word is clumsy enough and by no means creditable to us, but we may rightly claim it."

In 1785 Archdeacon Paley published his work on "The Principles of Moral and Political Philosophy." The third chapter of Book IV. is on "Suicide." In 1790 Charles Moore, M.A., Rector of Cuxton, in Kent, wrote "A full inquiry into the subject of suicide." 1785. 1790.

II. Be the origin of the word what it may, we have now to consider its meaning, and I may here say at once that I do not intend to enter into any theological or moral discussion, nor even into its psychological study, but will merely endeavour to give it its correct meaning from a legal point, as it should be used in the Coroner's Court, where it is mostly applied.

Mr. Justice Wightman, in *Clift* v. *Schwabe* (L. J. (N.S.), Com. Law), June 16th, 1847, said, "The term 'suicide' has no technical or legal meaning," but he passes to on say: "Innumerable instances might be given to shew that the word 'suicide' is almost invariably used in the English language in a criminal sense, and that such is the meaning of the word in its general and ordinary acceptation." Meaning of word Suicide.

What is the opinion and acceptation of one of the greatest criminal judges we ever had? I refer to the late Sir James Fitzjames Stephen, Bt. In the fifth edition of his "Digest of Criminal Law," 1894, he lays it down most clearly that "a person who kills himself in a manner which in the case of another person would amount to murder is guilty of murder, and every person who aids and abets any person in so killing himself is an accessory before the fact, or a principal in the second degree in such murder." (See also 1 Hale, P. C. 411–419; Fretwell, 1862, L. & C. 161; *R.* v. *Russell*, 1832, 1 Moo. C. C. 356; Draft Code, s. 183.)

Referring to the same authority, we find, in his History of "Criminal Law," 1883, Vol. III., p. 104, that "suicide is by the law of England regarded as a murder committed by a man on himself, and the distinctions between murder and manslaughter apply to this (so far as they are applicable) as well as to the killing of others. Suicide is held to be murder so fully that everyone who aids or abets suicide is guilty of murder."

Plowden, in giving judgment in *Hales* v. *Petit** in 1562, a case in 1562

* It is said that Shakespeare took his case and argument in "Hamlet" from this.

which Sir James Hales, one of the Justices of the Common Bench, drowned himself, says: "As to the quality of the offence which Sir James has here committed, it is in a degree of murder," because "he who determines to kill himself, determines to do it secretly, *nullo præsente, nullo sciente*, lest he should else be prevented from doing it; therefore the quality of the offence is murder."

I therefore submit that *suicide* is *self-murder*, and not merely *self-killing*.

1716. III. Hawkins, in his "Pleas of the Crown," 1716 (Vol. I., p. 67), says: "I cannot but take notice of a strange notion, which has unaccountably prevailed of late, that everyone who kills himself must be *non compos* of course; for it is said to be impossible that a man in his senses should do a thing so contrary to Nature and all sense and reason. If this argument be good, self-murder can be no crime, for a madman can be guilty of none. May it not with as much reason be argued that the murder of a child or of a parent is against Nature and reason, and consequently that no man in his senses can commit it? But has a man, therefore, no use of his reason because he acts against right reason? Why may not the passions of grief and discontent tempt a man knowingly to act against the principles of Nature and reason in this case, as those of love, hatred, and revenge, and such like are too well known to do in others?"

1736. Hales, in his "Pleas of the Crown," 1736, p. 142, says: "*Felo de se* or suicide, is where a man of the age of discretion, and *compos mentis*, voluntarily kills himself by stabbing, poison, or any other way"; and "it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind that renders them to be madmen or frantic, or destitute of the use of reason; a lunatic killing himself in the fit of lunacy is not *felo de se*, otherwise it is if it be at another time."

1785. Paley, in 1785, in his work and chapter already referred to above, uses the word suicide throughout as "denoting the act of a reasonable, moral, and responsible agent," and in no other sense.

1847. Chief Baron Pollock, in *Clift* v. *Schwabe* (17 L. J. (C.P.), 21, 1847), expressed his opinion thus: "In point of law, *as soon as* it is ascertained that *a person* who *has lost his sense of right and wrong* (it matters not what

else of the human faculties or capacities remain) *he* ceases to be a responsible agent, and in my judgment *can no more commit suicide than he can commit murder*."

From the 14th ed., 1903, of Stephen's Commentaries, Vol. IV., p. 48, 1903. we read: "In homicide committed on oneself, the party must be of years of discretion, and in his senses, else it is no crime; but this excuse ought not to be strained to that length to which coroners' juries are apt to carry it, viz., that the very act of suicide is an evidence of insanity. For the same argument would prove every other criminal *non compos* as well as the self-murderer; and the law very rationally judges that every fit of melancholy does not deprive a man of the capacity of discerning right from wrong, or of having a sufficient degree of reason to know that his act is wrong. And therefore, if a real lunatic kills himself in a lucid interval, he is a *felo de se* as much as a sane man."

Therefore, I submit, to commit suicide or self-murder the person must be a responsible agent, possessing the power of knowing right and wrong, a reasonable and a sane being.

IV. That *felo de se* and *suicide* are, in law, one and the same thing is, in my submission, beyond dispute. We have had above the greatest of authorities—Plowden in 1562, Hawkins in 1716, Hales in 1736, Paley in 1785, Pollock in 1847, and Stephen at the present period. Further, Blackstone, in his Commentaries, first published in 1769, said that "our law accordingly has ranked suicide amongst the highest crimes, esteeming it *a felony committed on oneself*." Here he defines suicide in the very words of *felo de se*, viz., "a felony committed on oneself."

To constitute the offence of *felo de se*, suicide, or self-murder, the party must die within a year and a day of the cause of the death self-inflicted; the whole day upon which that cause was done is to be reckoned as the first.*

We all know that if an insane person kills another human being he is not guilty of murder, but is detained during His Majesty's pleasure; but the definition of murder is: "When a person of sound memory and discretion unlawfully killeth any *reasonable creature* in being and under the King's peace, with malice aforethought, either express or implied" (Coke, 3 Inst. 47), so that, if a *sane* person kills one who is *in*sane, he is

* Sir John Jervis on the "Office and Duties of Coroners," 3rd ed., p. 144.

primâ facie not guilty. I say *primâ facie*, but in law a *reasonable creature* does not mean "sane," but "human," therefore a lunatic equals a *reasonable creature*, for he is a *persona* for all purposes of protection, even when not so for those of liability (Kenny, "Outlines of Criminal Law," p. 128).

Another interesting point of law is that though *felo de se* or suicide is self-murder yet an attempt to commit suicide is not an attempt to commit murder within the meaning of 24 and 25 Vict. c. 100 (*Reg.* v. *Burgess*, *Leigh* v. *Caves*, Crown Cases Reserved, 1862, p. 258). It is a common law misdemeanour (*Reg.* v. *Doody*, 6 Cox, C. C., 463), triable at quarter sessions.

I go further, and say that not only is it incorrect to return a verdict of "suicide whilst temporarily insane," but to say *committed* suicide is a double error of legal phraseology, for the meaning of *commit* in Johnson, with reference to this use of the word, is "to perpetrate—to do a fault—to be guilty of a crime," and this we have seen is an impossibility with the insane.

The writer of the article on "Suicide" in Vol. XII. of the "Encyclopædia of the Laws of England" (1898 edition) and others have said that the verdict, at the Central Criminal Court and elsewhere, in cases of trial for murder, of "guilty but insane," corresponds with "suicide whilst temporarily insane." From this I beg most respectfully to differ, remembering that the original verdict used to be "not guilty on the ground of insanity," the effect of which was that the murderer, a lunatic, was acquitted and allowed to go at large, until by 39 and 40 Geo. III. c. 94 (July 28th, 1800) "An Act for the safe custody of insane persons charged with offences" was passed: "Whereas persons charged with high treason, murder or felony* may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offence, and it may be dangerous to permit persons so acquitted to go at large: Be it therefore enacted, that in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder or felony that such person was insane at the time of the commission of such offence, and such

* This was extended to misdemeanours in 1840 by 3 and 4 Vict. c. 54, s. iii.

person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until His Majesty's pleasure shall be known, &c., &c."

And now, by the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38, s. 2),* which repeals the above Act of Geo. III., a special verdict is to be found of "guilty but insane."

Effect of *felo de se.*

V. If then, as I venture to submit, it is proved that *felo de se* and suicide are one and the same thing, how is it that we have two phrases to express the same terrible result? This is best explained by considering the effects of the two verdicts. *Felo de se* is the old common law verdict from the time of the Anglo-Saxons (A.D. 871–1066), and is still in existence, though seldom found, and it meant, in certain instances†, that one who committed a felony upon himself by taking his own life forfeited his goods and chattels, and in other circumstances his lands, *e.g.*, "if he kill himself from weariness of life or impatience of pain, let his movable goods only be confiscated."‡ But if a man were accused of crime or theft, or if outlawed or detected in any wickedness, and from fear of imminent accusation killed himself, or "without cause through anger or ill-will, as when he wished to hurt another and could not fulfil what he desired,

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* "(1) Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

"(2) Where such special verdict is found, the Court shall order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the Court shall direct," &c., &c.

† At a little later date (than Bracton) the suicide's goods were always forfeited (Maitland: "Hist. Eng. Law," Vol. II., p. 486).

‡ Louis IX., called St. Louis (A.D. 1211–1270), originated the custom of confiscating the property of the suicide.

he slew himself, he is to be punished and shall not have a successor." (Bracton.) Thus his lands were forfeited. Bracton, in his great work "*De Legibus Consuetudinibus Angliæ*," Vol. II., p. 349, § 17, states: "And it is to be noted, that in each writ, by which an escheat is sought on account of a certain person's felony, it is incumbent that it be expressly stated (and of which he has been convicted), because the land should never return to the chief lord, unless there has been a conviction of felony in some way or other, as if he be hung or outlawed, or has acknowledged the felony and has been abjured."

§ 18. "But if (he) has died before a conviction of felony, in whatever manner, the inheritance shall descend to his heirs, unless it should happen that, conscious of his crime and afraid of being hanged, or of some other punishment, he has slain himself, and the inheritance shall be an escheat of the lords.* But if he has through phrensy or impatience of grief or by misadventure, it shall be otherwise."

I have dealt somewhat at length upon this matter of the forfeiture of land, because the forfeiture of goods and chattels only is mentioned in modern works, and the distinctions relating to land appear to have been forgotten before the time of Lambord, 1602 (p. 247), and Staundforde, 1607 (19 D).

Dower. Another effect of the finding of *felo de se* was the depriving the widow of her dower; nor could the wives of felons hold in dower any tenement assigned them by such husbands (Britton, Vol. I., p. 37).

Will. Further, "if a man do (did) willingly kill himself, his testament, if he made one, is void, both concerning the appointment of the executor, and also concerning the legacy or bequest of any goods; for they are confiscate.†

Burial. Yet another matter resulting from the verdict of *felo de se* was the manner of burial. It was nowhere enacted by statute, but was a common

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* Forfeitures of common right belong to the Crown, but have in many instances been granted to corporations and lords of particular liberties. It appears that in a charter of Edward VI. granted to Thomas Wrothe, and under which Sir Thomas Wilson holds the manor of Hampstead, amongst other privileges is included the right to *all* property situated in England of a *felo de se* dying in that manor, in preference to the claims of the Crown. (*Notes and Queries*, 1856, Vol. I., Second Series, p. 313.)

† Swin. 106 (Bl. Com., 499). As to executors or administrators of the deceased traversing on inquisition of presentment of *felo de se* see, *v.* Williams on Exec. and Ad., Vol. I., pt. 2, b. 3, c. 4.

law practice or usage, under warrant from the coroner directed to the constables and churchwardens, to bury all who were found *felo de se* in some public street or highway, which was usually complied with by burying the party in a public cross-road, and by driving a stake through the body (4 Bl. Com., 190).* And this continued until the year 1823, when, by 4 Geo. IV. c. 52 (July 8th, 1823), it was enacted that "it shall not be lawful for any coroner, or other officer having authority to hold inquests, to issue warrant or other process directing the interment of the remains of persons, against whom a finding of *felo de se* shall be had, in any public highway, but that such coroner or other officer shall give directions for the private interment of the remains of such persons *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial-ground of the parish or place in which the remains of such person might by the laws or customs of *England* be interred if the verdict of *felo de se* had not been found against such person; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night.† Provided, nevertheless, that nothing herein contained shall authorise the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid, &c., &c."

It must not be supposed that the *felo de se* was the only person who was denied a Christian burial, though perhaps he was the only one who was buried in the highway. There were anciently other causes of this refusal, particularly of heretics against whom there was an especial provision in the common law. Persons not receiving the holy sacrament, at least at Easter, were excluded by a decree of the fourth Lateran Council, which became afterwards a law of the English Church. In like manner, persons killed in duels, tilts and tournaments.

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* In some countries the body of a suicide could only be removed from the house through a hole, made for the occasion, in the wall; it was dragged upon a hurdle through the streets, hung up with the head downwards upon the public gallows, 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.

† Josephus mentions (De Bell. Jud., iii., 8) that in some nations the right hand of the suicide was amputated, and that in Judea the suicide was only buried after sunset.

But at the present day it seems that these prohibitions are restrained to the three instances of persons excommunicate, unbaptised, and that have laid violent hands upon themselves (Canon 68 and the Rubric).

I have reason to believe that the last person subjected to this barbarous ceremony was the wretched parricide and suicide Griffiths, who was buried at the cross-road, formed by Eaton Street, Grosvenor Place, and King's Road, as late as June, 1823,* as reported in the *Chronicle*.†

This, then, was the condition of affairs concerning the *felo de se* from the earliest times, until, through advancing civilisation, the period arrived when coroners' juries were, in my opinion, determined to oust the degradations upon the body of the deceased and the unfair punishments upon the survivors by depriving the widow of her dower and confiscating from her and the family not only goods and chattels, but even the very land, by inventing a verdict that would save them from so distressing a result. Thus the word "suicide" was introduced about 1700, coupled with the expression "whilst temporarily insane," which is only a charitable or pious perjury on the part of the jury to save the family from poverty and disgrace and the stigma of former penalties.

The law—we can scarcely say the ends of justice—being thus defeated for a considerable time, and public opinion being ripe for a change, our
1823. legislators, who so seldom legislate in advance of the people, were driven in 1823 first to abolish, by statute law, the repulsive manner of burial
1870. described above; whilst in 1870, by "An Act to abolish Forfeitures for Treason and Felony" (33 & 34 Vict. c. 23, s. 1), "No confession, verdict, inquest, conviction, or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in this Act shall affect the law of forfeiture consequent upon outlawry."

1880. Ten years later (1880) another change took place again in relation to the burial, when, by "An Act to amend the Burials Laws" (43 & 44 Vict.

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* Note that the statute 4 Geo. IV. c. 52, July 8th, 1823, abolishing this manner of burial, was passed the following month, and related to England only. The custom still continues in parts of Scotland.

† Now the *Daily Chronicle* since Dec. 10, 1869; see Appendix.

c. 41, s. 13), "it shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the Ordinary, without being subject to any ecclesiastical or other censure or penalty."

Again, in 1882, we have "An Act to amend the law relating to the interment of any person found *felo de se*" (45 & 46 Vict. c. 19), which repeals the Act of 4 Geo. IV. c. 52, *i.e.*, the Act of 1823 quoted above, and provides "that the Coroner shall direct that the remains of any person *felo de se* shall be interred in the usual churchyard or burial-place, and that the interment of such person may be made in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880, but does not further authorise the performing of any of the rites of Christian burial on the interment of such person. Thus any form of orderly religious service may now be used at the interment of a person *felo de se*, except that of the Church of England, by a minister of the Church of England" (Brooke Little, "Law of Burials," 3rd ed., p. 16), because this is forbidden by the Rubric (*q.v.*). 1882.

All this changed the law as to the rights of heirs and next-of-kin, also the burial of the deceased, but leaves the law as to *felo de se*, being a crime, as it stood in the first place.

Effect of Suicide, etc.

And now for a few words concerning the effect of the verdict "suicide whilst temporarily insane." We have seen that *felo de se* and suicide are one and the same thing, viz., self-*murder*, or the committing of a felony upon oneself. Of course, in order to avoid forfeiture, &c., some word or phrase other than *felo de se* had to be used, coupled with the additional phrase of "whilst temporarily insane," which appears to constitute the real difference, if any, between the two verdicts and was used to secure :—

1. Life assurance money.
2. Burial in a churchyard or some burial-ground other than the highway, before the passing of the statute 4 Geo. IV. c. 52.

3. The use of *some* form of burial service, the rites of Christian burial—*i.e.*, the burial service contained in the Book of Common Prayer of the Church of England—being forbidden by Canon 68 (A.D. 1603) and the Rubric, which says: "Here it is to be noted that the office ensuing is not to be used for any that die unbaptised or excommunicate, or have laid violent hands upon themselves."

Life Policy.

Let us consider these points *seriatim*. 1. Irrespective of any condition in a policy of life insurance, on principles of public policy, if a person who has effected a policy of insurance on his own life afterwards dies by the hands of justice or commits suicide—unless, in the latter case, he was insane and not accountable for his acts—the policy is vitiated, and no action can be brought to recover the amount thereof, and a stipulation to uphold a policy in any such case would, it is said, be contrary to sound policy and ineffectual. In addition to this, it is a very frequent practice of insurance companies to insert in their policies conditions vitiating them on such events, except to the extent of any *bonâ fide* interest which at the time of the death may be vested in any other person for valuable consideration.* If this is done, it makes no difference, in the case of death by a person's own hand, whether he was sane or insane at the time. It is important, however, to note that, in the absence of any condition on the point, the rule of the common law is that whether the amount of the policy can be recovered depends on the question of whether or not the person was at the time responsible for his own acts.† (Indermaur's "Principles of the Common Law," 9th ed., p. 210.) But it is the practice of almost all offices to pay in all cases except where there has been fraud; some offices protect themselves by eliminating the risk of suicide for a certain term of years, say two or three, or as many months only, by a clause in the policy to that effect.

Burial.

2. It is not generally known, I think, that many of our cathedrals and ancient parish churches and churchyards never have been consecrated, it being "wholly illegal and a mere Popish superstition unallowed by the Church of England."‡ The Book of Common Prayer contains no

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* *Vide* White *v.* British Empire Mutual Life Assurance Co. (L.R. 7, Eq. 394); City Bank *v.* Sovereign Life Assurance Co. (32 W.R., 658; 50 L.J., 565).

† *Vide* Bunyon on Life Assurance.

‡ *Vide* "The Parish," by Toulmin Smith, Appendix A.

such service or reference, and the Articles of Religion (XXII.) prescribe against the doctrine of Purgatory as "a fond thing vainly invented." But this doctrine of Purgatory was the foundation on which alone the superstition as to the consecration of burial-grounds was built up. But I must not do more than touch the fringe of this interesting subject *en passant*, and leave it; but the interring, in consecrated or unconsecrated ground, of one who has laid violent hands upon himself amounts to nothing, for in truth no ground was consecrated*; neither do the Burial Acts of 1852 and 1853† affect the matter, for they say that a *part* "may" be consecrated. No form of consecration is sanctioned, without which the ceremony is unlawful; and the same Acts very explicitly require that the *whole* shall *not*, under any circumstances, be consecrated.

Christian Burial.

3. As to the rites of Christian burial, I would point out that when the remains of anyone deceased arrive at the gates of the burial-ground—mostly cemeteries nowadays—an order to bury is presented to the officiating clergyman, who rarely knows what has been the cause of death, natural or otherwise, neither has he the right to inquire.‡ His duty is to carry out the order to bury; thus burial in *consecrated* (?) ground, with all the rites of Christian burial, is secured to the deceased in nine hundred and ninety-nine cases out of a thousand.

In practice, then, there is no difference whatever in the effects of the two verdicts found—*felo de se* in the one case, or "suicide whilst temporarily insane" in the other.

In conclusion, I submit, now that all the penalties of forfeiture, &c., of the *felo de se* have passed away, and go only to form part of the history of our laws and country, that the word "suicide," which is etymologically clumsy, useless, and discreditable to us, should be expunged from our vocabulary, and that the Coroner's Court should record a verdict, as set out in the schedule of the Coroners' Act, 1887, viz., "that the said A. B. did feloniously kill himself,"§ in all cases except where there is

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* *Vide* the Constitutions of Otho (A.D. 1237); also Archbishop Laud's impeachment when he consecrated St. Catherine Cree Church in 1630 ("Canterburie's Doome," pp. 112–128, 497–506).

†15 & 16 Vict. c. 85, ss. 30 and 32; 16 & 17 Vict. c. 134, s. 7.

‡ Phil. Eccl. Law, 2nd ed., Vol. I., p. 671.

§ During the ten years 1893–1902 the verdict of *felo de se* has been returned in less than two per cent. of the total number of verdicts of self-destruction.

sufficient evidence to say that the deceased, at the time of taking his own life, was not capable of appreciating between right and wrong, and should have been classified as a person of unsound mind, in which event the verdict should be, as set out in the schedule of the Coroners' Act, 1887, viz., "that the said C. D., not being of sound mind, did kill himself," which is a rare event, and a very different thing from "committed suicide whilst temporarily insane," for, as we have seen, suicide is murder, of which the insane is incapable, either upon himself or another.

2, Essex Court, Middle Temple.

APPENDIX.

From the *Chronicle*, June, 1823.

"The extreme privacy which the officers observed, as to the hour and place of interment, increased in a great degree the anxiety of those who were waiting, and it being suspected that the body would have been privately carried away, through the back part of the workhouse (St. George's) into Farm Street Mews, and from thence to its final destination, different parties stationed themselves at the several passages through which it must unavoidably pass, in order to prevent disappointment. All anxiety, however, on this account, was ultimately removed by preparations being made for the removal of the body through the principal entry of the workhouse leading into Mount Street, and about half-past one o'clock the body was brought out in a shell supported on the shoulders of four men, and followed by a party of constables and watchmen. The solitary procession, which increased in numbers as it went along, proceeded up Mount Street, down South Audley Street, into Stanhope Street, from thence into Park Lane, through Hyde Park Corner, and along Grosvenor Place, until its final arrival at the cross-road formed by Eaton Street, Grosvenor Place, and the King's Road. When the procession arrived at the grave, which had been previously dug, the constables arranged themselves around it to keep the crowd off, upon which the shell was laid on the ground, and the body of the unfortunate deceased taken out. It had on a winding-sheet, drawers, and stockings, and a quantity of blood was clotted about the head, and the lining of the shell entirely stained. The body was then wrapped in a piece of Russia matting, tied round with some cord, and then instantly dropped into the hole, which was about five feet in depth; it was then immediately filled up, and it was gratifying to see that that disgusting part of the ceremony of throwing lime over the body and driving a stake through it was on this occasion dispensed with. The surrounding spectators, consisting of about two hundred persons, amongst whom were several persons of respectable appearance, were much disgusted at this horrid ceremony."

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