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Publication/Creation

1867

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CASE OF HENRY GABITES;
A
MEDICO-LEGAL STUDY.

BY
JOHN KITCHING, M.D.,
MEDICAL SUPERINTENDENT OF THE FRIENDS' RETREAT, YORK.

L O N D O N :
PRINTED BY
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[Reprinted from the 'JOURNAL OF MENTAL SCIENCE,' published by authority of
the MEDICO-PSYCHOLOGICAL ASSOCIATION, No. 62, July, 1867.]

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MEDICO-LEGAL STUDY.

At the winter gaol delivery for the West Riding of York, held at Leeds in December, 1866, Henry Gabites was indicted for the murder of Arthur Allen.

Henry Gabites and Arthur Allen were fellow-apprentices to a draper in Fargate, Sheffield, whose name was Edward Draper. Gabites was sixteen and a half years old; Allen was a year and a half younger, and had only been in the business about nine months. The two youths slept together in the same room, and had the room to themselves. Since the arrival of Allen, as the youngest apprentice, he and Gabites had been companions and friends. They had had no quarrel, so far as the rest of the family had observed, up to the time of the tragedy, although a slight event had occurred a few days previously, which had, to some extent, altered their mutual feelings.

In the week preceding the death of Allen, he and Gabites had taken a walk together, in the course of which they entered a confectioner's shop, and Allen bought some refreshment, for which he could not pay. This irregularity was reported to Mr. Draper, and the latter, in the exercise of a laudable care for the moral conduct of his family, forbade the youths to leave his house after business hours till further notice. The prohibition was made on Saturday. On Monday night Gabites was observed to be dull and heavy, and complained of headache. His companion and himself went to bed, and appeared to be on their usual friendly terms. The following morning Gabites went, about half-past seven o'clock, to his master's

bedroom, and, knocking at the door, said, "I have killed Arthur." His master asked him what he meant. He said again, "I have killed Arthur." In reply to a further question, he added, "I have murdered him with a hammer, and stabbed him with a knife." On being asked what he had done it for, he replied, "For revenge." Mr. Draper rushed to the bedroom, and found the narrative too literally substantiated by what he saw. Allen was lying in bed on his back, in a pool of blood. There was a carving-knife on the bed beside him, and a hammer on the dressing-table. Mr. Favell, the surgeon, was sent for, and he found three wounds on the person of Allen—one about two inches in extent on the left temple, another upon the crown of the head, and a third under the left ear. The first was a fracture and depression of the skull, the temporal bone was broken, and a portion driven in upon the brain. The second was a fracture upon the crown of the head, but the bone was not driven in or displaced. The third wound, in the neck, was superficial. The wounds on the head were evidently produced by a blunt instrument. Death rapidly ensued.

Gabites was sent to the town hall, in charge of a fellow-apprentice, whom he asked on the way what he should say when they arrived. He was told to say that he had killed Arthur Allen; and he gave the policeman an account of the deed nearly in the words he had first used to his master.

So rude and violent an interruption to the peaceful current of domestic life in a well-conducted family naturally drew an unusual amount of curiosity to the antecedents of a youth who had startled it with so dire a tragedy. Domestic broils, youthful quarrels, heart-burnings, and jealousies, amid the miscellaneous persons employed in a trading establishment, are sufficiently common, and are usually settled by squabbles and petty acts of retaliation, which are ordinarily unknown beyond the narrow circle in which they originate; but the sacrifice of life as an atonement for some petty offence, or in revenge for some slight injury, is an event so strange, and presents so much that differs from the ordinary incidents of murder, that it is no wonder if public curiosity was much excited regarding the history and mental condition of the stripling homicide. Did this disaster, by which the life of an unoffending boy was destroyed, spring from the bloodthirsty passions of a miscreant, or the insensate surrender of a weak and unsound mind to the temporary domination of a homicidal impulse? Was Gabites, in the ordinary sense of the term, a fully accountable being, or was he affected with some form of insanity which deprived him of the powers necessary to resist temptation and curb his impulses? Was he, in fact, a murderer or a maniac? These were the questions naturally asked by every one. They were thoroughly investigated at the trial, and an endeavour was then made to solve them. The present paper contains an

account of the principal features of this trial, and what the writer regards as a solution of the questions above propounded.

Henry Gabites was born on the 16th of March, 1850. He was the youngest but one of seven children. His mother was a delicate woman, and died about ten years ago of consumption. She was a fond and affectionate mother, and devoted herself to the welfare and training of her children. The father was a painter by trade, and so long as his first wife lived was in comfortable circumstances. When about a year old, Henry was attacked with fits. Under medical advice leeches were applied, and the mother, thinking what was once beneficial would always be so, kept leeches in the house, to be ready whenever the fits returned, which they continued to do for about two years. As the fits declined, they gave place to deafness, which remained with varying intensity for many years. The mother was apprehensive that the duration and severity of the fits had seriously affected the child's constitution, and she was several times heard to say she hoped it would please the Lord to take Henry before herself, for she was afraid the fits would make him wanting in mind. She lived long enough to see her fears realised. She observed an evident defect in the mind of her boy. He had not the sprightliness and vivacity, nor the intellectual capacity common to children of his age. Those who knew the family noticed that Henry was a dull, feeble-minded boy. They described him as stupid and daft, having a vacant, soft, and simple look. He was also shy and retiring, not entering into the pastimes of other boys. Along with these intellectual defects, it was allowed on all hands that he was an amiable, docile boy, having never exhibited any approach to malice or vindictiveness. The teacher of the day-school which he attended regularly up to the time of his mother's death, irregularly after it, during a period of seven years, deposed that he always had a smile or smirk on his face. There seemed a vacancy and innocency in him different from the other boys. His disposition was very amiable, not at all vindictive or rough, remarkably easy to guide. He was diffident and retiring, seldom in any scrape, always on good terms with his playmates.

Up to the age of six years he had the advantage of a devoted mother's tender and loving care. After a year's interval a woful domestic change took place. His father married a second wife—a young woman whose character and conduct presented a most unhappy contrast to those of her predecessor in his affections. The fortunes and respectability of the family rapidly declined. To Henry and his younger sister the change was portentous. The second Mrs. Gabites possessed neither affection nor feeling for the children. She was a woman of a violent temper, and treated the children with more than the proverbial harshness of a stepmother. Her conduct towards them is represented as persecuting and cruel. She kept

them almost constantly engaged in hard and slavish toil, and forced Henry to do the work of a domestic drudge—scouring the floors, washing the walls, &c. She kept him short of food, so that the neighbours often gave him bread in secret. She beat him till he was bruised and sore, and rendered his life abjectly miserable. To this physical ill usage was added the bitterness of threats and denunciations that he would some day come to the gallows. His weak and tender mind was so cowed and overawed by this tyranny, that he acquired a full belief in the future realisation of this prediction. During the time he was thus ill-treated he is described as being amiable and docile—more like a girl in character than a boy—timid, shrinking, and compliant. From an early age he had been sent to school both on week-days and Sundays. Whilst his mother lived his attendance was regular; after her death it was much less so. A few months previously to his going to Mr. Draper's he was employed as an errand-boy by a draper in Hull, from which place he went to Sheffield.

The above details form a brief outline of this wretched boy's career up to the sad crisis in which it has culminated. Very early in life an aggravation of the sufferings to which infancy is exposed, followed by infirmity of body and mind, sufficient to rouse the solicitude of a kind and watchful mother for the future reason of her boy; then the transference to the hard discipline of a cruel step-mother, who pursued a course of treatment strangely adapted to aggravate any feebleness or imperfection in the mental or moral constitution of the boy, or even to impair it if sound; finally, the awful catastrophe, so unlike the succession of developments in ordinary lives:—these form materials for interesting psychological study, and challenge careful inquiry whether there be here the usual ingredients of criminal ebullition, or the natural procession and result of psychical disorder. The friends of Gabites thought there was sufficient reason in his history and the inexplicable nature of his crime to doubt his sanity; and, with a view to his defence on that ground, they engaged Dr. Williams and the writer to examine him. This, of course, is the usual practice in criminal trials. The law presumes every man to be sane till he is proved to be the contrary, and it lies in the defence to bring forward the proof. Looking at this practice with regard to the elimination of truth, it has patent disadvantages. Its tendency is in favour of partisanship, and against that calm impartiality with which a weighty scientific question involving the distinction of disease from crime, and the issues of life and death, ought to be investigated. Perhaps it is impossible for any one, however great may be his desire for an impartial and just conclusion, not to be in some degree biassed towards that view of the question which he knows he is sent in the hope of being able to support. It is very probable that this consideration may have the effect of somewhat

magnifying the minor indications, and of inclining the scale of opinion in what might otherwise be held doubtful. But there is this to be said: what holds true of one side is equally true of the other; so that the net result may simply be a more or less exaggerated interpretation of the symptoms making in favour of each side. If this be the case with regard to medical evidence, it is in a higher degree true of non-professional evidence. The measurement of human intellect is not based upon any standard which is universally accepted. Every person estimates mental competence according to a standard of his own fixing, or by reference to some other individuals who, according to the different points of view from which they are regarded, may hold very different positions in reference to mental capacity or deficiency. This liability to a variation in the standard is further increased when the intellect is immature from youth. Another element of complexity is introduced into the problem—an additional source of vagueness and uncertainty. Hence it happens that what appears gross stupidity to some is only a common mediocrity in the eyes of others. What seems proof of a weak capacity according to the judgment of one witness, is compatible with ordinary ability in the view of another. The conscious shrinking which indicates, in the opinion of some, an over-sensitive and morbid moodiness of mind, possesses, in the estimate of others, the character of a proper and natural shyness. A shy disposition explains the phenomenon to their satisfaction. The word "disposition"—the relative position and mutual influence of the various tendencies in the mind as they commingle and manifest themselves in resulting character—is an admirable term, but when used as explaining morbid phenomena, it obscures instead of throwing light upon them. These remarks refer to a class of difficulties in the way of arriving at a uniform conclusion, which reside in the minds of those from whom testimony is sought. There are other and formidable difficulties inherent in the subject itself. The moral and intellectual training, including the associations and influences to which an individual has been exposed, forms a prominent element of the difficulty alluded to. A mind originally weak may be strengthened by culture; defective moral faculties may be invigorated by careful training. Vicious propensities may be repressed; violent impulses may be assuaged; morbid irregularities may be tempered. If the domestic and social circumstances of a young person have been favorable, these results will undoubtedly, in a greater or less degree, have been brought about. On the other hand, if the circumstances have been adverse to the implanting and promotion of what is good and virtuous, the opposite result will follow, and what is morbid in the character will be strengthened and developed. If the process of wise training be suddenly cut short, and succeeded by a mode of treatment which is calculated to vitiate what is good, and exasperate what is bad and

defective, the effect may be naturally expected in a confused jumble of opposite and contradictory manifestations, the unhealthy and disproportionate ascendancy of evil propensities strangely and hideously contrasting with other and better qualities, perhaps, more habitually displayed.

These considerations, however imperfectly set forth, are strictly relevant to the case in point. The determination of the soundness or unsoundness of mind in a person so young as Gabites, standing in the terrible position he did, required that all these sources of difficulty—in other words, sources of error—should be held in view, and demanded all the elucidation which the circumstances of his past life could throw upon them. There is also another consideration of some importance not to be lost sight of in the difference between the insanity of juvenile and of adult persons. Juvenile insanity more easily escapes detection, or eludes observation under a latent form, than when it exists in adult or more advanced life. Cases are quite common in which insanity has been creeping along with the advancing years of a boy or girl, every now and then strongly suspected, but not fully recognised until it has burst out in some sudden act of unmistakable madness. In tender years there are not the same data for comparison as at a later period of life. An adult has an established character—a long series of antecedents to appeal to—a long array of duties discharged or responsibilities sustained, as a basis for instituting a comparison or forming a judgment. But with all these facilities for discrimination in the case of adults, the access of mental impairment in them is often so gradual, and comes under so many varieties of guise, that the early indications are recognised with difficulty, and only clearly accepted for what they are when they have undergone further development, and entered upon the domain of confirmed lunacy. If this be so with adults, it is much more so with young persons. In early youth, the freaks and eccentricities of temper, to which that age is liable, cast a blind over the incipient manifestations of mental disorder, and quiet alarm as to their real tendency. They are the vagaries of a nature not subjected to the control of a developed and intelligent will—the weedy crop of a life not yet subjugated by a sense of responsibility, which will grow with an increase of days, reduce the moral chaos to order, and put the bridle of a respectable regularity upon it. These expectations are doomed to disappointment by the explosion of the morbid energies in some flagrant act of cruelty or violence. Then a flood of light is thrown upon the indications of the past, and the insanity so disastrously declared absorbs the accumulated irregularities that have gone before, and binds them into a thick bundle of tangible disease.

The practical application of these remarks to the diagnosis of juvenile insanity is obvious; but the physician is placed at a great

disadvantage when the symptom which most of all satisfies his own judgment consists of some flagrant violation of the law or some desperate injury to life or limb. He is suspected of a desire to screen a criminal, or serve some humanitarian crotchet of his own. The cloudy region of motive has necessarily to be travelled through, and the adequacy or inadequacy of the reason assigned, or the object to be attained, on the supposition of a mind in full possession of its powers, to be discriminated. No case in recent times affords a better illustration of what is here adduced than that of the unfortunate Townley.

There does not appear to have been much in his previous history to give very clear data for the conclusion that his mind was unsound, and that the explosion which afterwards occurred was the natural working out of the ascending force of the disease. The killing of his sweetheart and his subsequent conduct were the most important links in the otherwise slender chain of evidence upon which the diagnosis of his insanity hung. And how suspiciously and jealously was this evidence received! Yet now, after the whole tragedy has been enacted, and what would have been has been suddenly enveloped in the black pall of death, who doubts Townley's madness? Cases like Townley's are surely very instructive, and should have the effect of teaching the uninitiated something of modesty and diffidence in dogmatising upon these difficult questions. A larger amount of forbearance and respect might very well be awarded to those witnesses who have been brought in their daily life into closer contact with the sufferings and trials of their fellow-creatures, and into closer intimacy with the secret miseries of families and individuals than any other class of persons, than has sometimes been awarded to them by the unconcerned public. These claims are often too lightly esteemed, and too easily set aside by a thirst for revenge and the false pretence of the security of society and protection against immunity for crime.

No one could undertake the duty of examining Gabites, and pronouncing a conscientious judgment on his mental condition, without having reflections similar to these suggested to him; without being impressed with the anticipation of what he might have to undergo in court, or to sustain at the hands of a portion of the public which prefers the excitement of an execution for murder to the dull and disappointing process of being convinced that the accused is a lunatic. It was always easier to divide the Gordian knot with a sword than to perform the tedious operation of unravelling its intricacies, and it continues to be so; and to the sensational spectator the slashing solution gives a livelier emotion, and is proportionally relished.

The interests of humanity, however, and the vindication of the truth, must not yield to any considerations of personal comfort, any

unworthy truckling to popular prejudice on the one hand, or the fear of persecution and ridicule on the other. A cross-examination when popular prejudice runs in favour of forensic licence, is an ordeal no one can enjoy; but if it promote, by ever so little, the establishment of sound principles, and throw abroad a spark of light on a material theme, it must be unflinchingly encountered. It is a privilege at the cost of any personal sacrifice to be made instrumental in the acceptance and diffusion of a valuable truth.

My visit to Gabites was on Sunday, the 16th of December. By the kindness of the jailer I was permitted the use of his room, and the prisoner was brought in and allowed to remain with me as long as I wished. As Gabites entered I was struck with his childish appearance. He is a short, plump, pale-faced boy, not standing more than five feet one inch in height, of a timid and amiable expression of countenance. The impression first conveyed is that of a rather engaging lad—it is only on a closer observation of his features that you perceive a slightly dogged and suspicious look, due mainly to the well-closed mouth and a certain restlessness in the eyes. His look is, however, weak, simple, and unintelligent. The face is unsymmetrical, the right side projecting considerably more beyond the mesial line than the left. The teeth on the right side of the jaw are large and coarse, jammed together, and irregular. The head is rather large and broad, and, like the face, unsymmetrical on the two sides, the right being larger than the left; both sides, however, displaying that character which has been called by anatomists ventricular. The eyes are large, dark in colour, soft in expression, and surmounted by good clear eyebrows. The conjunctivæ are injected; but the pupils not contracted; rather open. Complexion pale, slightly brown; skin a little unctuous. On examining him with regard to his mental capacity, it was evident that he was either badly educated, or his abilities for acquiring knowledge were of a low order. His acquaintance with elementary learning was loose and inaccurate. He gave me very decidedly the impression that his intellectual abilities were below the average of boys of his own age. A want of clearness of apprehension was evinced throughout. He remembered a variety of particulars in the ordinary branches of school education, but they remained vague and isolated in his memory, and had undergone no intellectual assimilation. The same holds good as regards his comprehension of things moral and religious. It is difficult to convey an idea of the superficialness with which his answers impressed me as the all-pervading character of his mind. A universal feebleness of tone both in the ideas and the emotions suggested a poor cerebral organisation and defective function. There seemed no power of receiving deep impressions, and a great want of the power of reflection. The affections had received no cultivation for many years, and therefore could not be expected

to be very strong ; but his demeanour during my visit led me to the conclusion that they were exceptionally inert or wanting. The moral sense, the perception of the difference between right and wrong, was not absent, but, like all the other faculties, was vague. He had learned at the Sunday school the commandment, "Thou shalt not steal," and therefore knew it was wrong to steal ; but he stole sometimes and felt no compunction for it. He knew the difference between truth and falsehood, but had told lies when it suited him, without feeling condemnation. He had practised masturbation, but stated that he had abandoned it, because he thought it was "rude."

He answered the questions put to him frankly, and to the best of his power, without much reserve, and apparently without any attempt to prevaricate or feign. His manner induced the belief that he was simply telling the truth. Of course the most interesting portion of the examination was that connected with the commission of the murder. He spoke of the persecution and cruelty to which he had been subjected, and the misery which he always felt from what he had to endure. He stated that he had been so often told that he should come to the gallows, that he always believed he should. The means by which he should come to this end would be by killing somebody. Who this somebody was he had no idea. He often thought he must kill himself, and once he had run away from home with the intention of drowning himself ; but his courage had failed. This running away was spoken to by some of the witnesses. When he came to Mr. Draper's as an apprentice, he had a fixed belief on his mind that he must kill either himself or somebody else. For some time he had slept in a room with a young man who was much older and bigger than himself. He had often thought of killing him, but had never attempted to do it, because he was so much younger and weaker than his companion. He had been very fond of Allen (the victim) and had no spite against him, but when he was punished by his master for what he considered Allen's fault, the idea of killing Allen arose in his mind. It was on a Saturday that this idea took possession of him ; and on Sunday he went to Carver Street Chapel, and whilst there his mind was entirely engaged with the idea of the killing, and he made up his mind to do it. On Monday he secreted the hammer and knife, denying all knowledge of them when they were inquired for. He remained on friendly terms with Allen all the time ; nobody observed any difference in his behaviour till Monday night, when he felt very dull, and was asked what was the matter, when he replied that he had a bad headache, which was true. He went to bed and slept, but woke early in the morning with the deadly purpose still fixed in his mind. He waited till he could see, and then, whilst Allen was sleeping, struck him a violent blow with the hammer on the temple. At this Allen started

up in bed and frightened him, when he again struck him, and the poor fellow fell back insensible. But lest he should rise again or make a noise, he (Gabites) then took the knife and stabbed him in the neck. These horrible details were related with a stolidity and an insensibility to their true nature, which, though inadequate to the legal definition of "not knowing the nature and quality of the act," could only arise from a most imperfect appreciation of its nature and quality.

Having now accomplished his purpose, and believing that he had now only done what he must some time or other have done, he left the house and proceeded to the town hall in order to deliver himself up to the police. By the time he reached the police-office he came to the conclusion that the police would not believe his tale, and that it would be better to have somebody with him to corroborate it. He therefore walked past the town hall; and after rambling about the town awhile, returned home and informed his master as already detailed. After the inquest he was kept in the police-cells, and slept there alone several nights. He was not afraid of being alone in the dark, and he slept as well as usual. He had no visions or startling dreams, and had had none since coming to Armley Gaol. He was now very sorry for what he had done, because he was afraid he should be hung, and hanging was a thing he should dread. He had rather be imprisoned for life. Dr. Williams examined him on the following day; but we did not meet till the day of the trial, and then only in court. Our conclusions were therefore formed separately and independently, and they were that Gabites was of unsound mind. We both thought there was sufficient evidence of this to justify us in endeavouring to establish it in court. The prosecution forthwith engaged medical evidence to rebut our opinion.

It was evident, therefore, that this trial was to be another of those medical and forensic contests in which victory was to be as eagerly sought as truth, and in which an endeavour would again be made to throw confusion over the difference between sanity and insanity, often sufficiently nebulous, by the refinements and absurdities of metaphysical definitions.

Dr. T. P. Smith, of the Mount Stead private asylum, examined Gabites for twenty minutes on the morning of his trial, and discovered nothing that was indicative of unsoundness of mind. Dr. Smith stated that Gabites had conversed with him calmly and rationally, had answered quietly all questions put to him, but had volunteered nothing; his answers were rational and pertinent to the questions; Dr. Smith had no doubt the accused quite understood right from wrong. Dr. Smith stated that the "physique" of Gabites was slightly defective, and the body small for his age; that his head was undeveloped to a slight degree, and the lower part of his face very receding and undeveloped. The rest of Dr. Smith's

evidence turned chiefly on the metaphysical character of homicidal insanity and monomania, and as having little practical application to the case in court may be passed over. His general conclusion was, that because in the course of twenty minutes' conversation with Gabites he had not detected unsoundness of mind, there was none, and that the accused was a sane, and fully responsible person.

Dr. Smith was not asked, either in chief or cross-examination, a single question as to the motive which had induced Gabites to kill Allen. Gabites had said, when asked why he had killed his fellow-apprentice, that he had done it for revenge. Whether it was that this allegation was considered by all parties so satisfactory and natural that it could only be quietly accepted, or whether it was so manifestly absurd and inadequate, that it was better for the prosecution to keep it entirely out of view, it is not easy to decide. Mr. Waddy, for the defence, seemed about to bring out this important aspect in the case, when he asked Dr. Smith whether "if a man committed a crime, which was entirely opposed to the whole current of his previous life, and committed it, too, without any apparent reason, that was not a sign of intellectual weakness?" Dr. Smith replied, "It might be a sign of mental weakness, but I should expect some other signs." "No doubt," said the counsel, "but would you expect other signs in the case of a youth who, when a child, had been long subject to fits—would he not be more likely to have disease of the brain than any other person who when a child had not been subject to fits?" Dr. Smith: "Yes, he would be more likely, certainly." Mr. Waddy: "Even at maturity would he be more likely to have disease of the brain than a person who when a child had not been subject to fits?" Dr. Smith: "Yes, he would be more likely than a person who was perfectly sound, or in other words, had never had fits." At this point the cross-examination diverged into much less pertinent channels, and the impression it was likely to convey was attacked by the prosecuting counsel with one of those questions so much more likely to hide than elicit the truth in a special case. "Would you conclude that every man who for the first time committed a crime was insane, having previously led a good life?"

A question put in this form is delusive, and if not intended, is calculated, by excluding a regard to special cases, to throw a blind over them, as well as to cast ridicule upon the supposition that in any case the commission of a great crime, by a man hitherto moral and inoffensive, might result from disease. What is true of individual cases is not true universally, and what is true universally flies far above that which is equally and additionally true of special cases. It is not true that in every case where a previously moral and inoffensive person commits a flagrant crime, his commission of that act is a proof of insanity. His previous good conduct may aggravate

the criminality of the deed ; but it is true that in some cases the first commission of a cruel, violent, or unlawful deed may be the declarative symptom of an impaired mind.

Dr. Williams gave his evidence in a very direct and clear manner. He thought the way in which Gabites committed the act for which he was on his trial proved the unsoundness of his mind. Prisoner had stated to him what I was ignorant of, that whilst he was killing Allen, he was repeating the Lord's Prayer in a hurried manner—and Dr. Williams came to the conclusion that Gabites was a homicidal maniac.

The writer's evidence, as given at the trial, is fairly summed up in the 'Sheffield and Rotherham Independent,' from which the following extract is taken as embodying its essentials :—

"Dr. Kitching said : 'I have examined the prisoner, and as the result of my examination, I say he is of unsound mind.'

"Mr. Waddy (to witness). 'Will you explain the state of mind in which the prisoner actually was?' Witness : 'Yes. He is a very imperfectly developed being, both physically and mentally. His intellectual powers are feeble and have not been developed to the average extent of persons at his age. His knowledge is very small compared with his opportunities. His moral faculties are exceedingly feeble and obtuse, and his knowledge of things with which boys are usually well acquainted is exceedingly limited and imperfect. He told me he had never heard the Bible read except when he was at the Sunday school ; that at the Sunday school he was taught the ten commandments very carefully and diligently, but that he could not tell them in order at all ; that he had been taught all the books of the Bible, but could not enumerate the first five, and the commonest facts of our religion are unknown to him. As described by a previous witness, he was "daft." There was such a want of common sense in the lad, that I look upon him as a person of very imperfect mind, both intellectually and morally. His intellectual and moral faculties are so low that he is not to the ordinary extent an accountable being ; and moreover he had an abiding delusion, grounded on this weak and imperfect mind, that he must kill somebody, and when the first opportunity presented itself on some little aggravation or other, his mind became excited, he was driven beyond his self-control, and he committed the awful act. That is the explanation I have to give of the commission of this crime.'"

It will be seen from the foregoing quotation that there was no attempt on the part of the writer to make out a case which should bring Gabites under legal exemption on any criterion at present recognised by the bench. Before the defence was entered upon the judge had quoted the following passage from the report of the judges to the House of Lords : "That to establish a defence on the ground of insanity it must be clearly proved that at the time of the com-

mittal of the act charged the accused was labouring under such a defect of reasoning from disease of mind as not to know the nature and quality of the act he was doing, and that if he did know it, he did not know that he was doing what was wrong." "That of course referred to general insanity."

According to this definition, legal exemption on the ground of insanity is only accessible to persons who are either thoroughly mad or thoroughly imbecile. It was not anticipated by those who gave medical evidence for the defence that an acquittal could be secured on this basis, nor would it have been in the interests of science or truth that it should be so. What was hoped was, that the jury would have recommended the prisoner to mercy on the ground of his weakness or unsoundness of mind. Instead of such a verdict he was declared guilty, "with a strong recommendation to mercy from the whole of the jury, on the ground of his extreme youth."

Let us briefly recapitulate the reasons why in our opinion the words "unsoundness of mind" might have been properly substituted for "extreme youth."

In infancy Gabites was subject to epilepsy for two years. He was repeatedly bled for the complaint, and when the fits ceased deafness remained, and a peculiarity was noticed by his mother which led her to fear that his mind was impaired to such an extent that she hoped he would die. Whilst she lived he enjoyed the kind of home-training which would best promote his physical and mental health, and overcome the consequences of his early infirmities. With her death, and the installation of the step-mother as the directing head of the family, the moral atmosphere in which the boy lived was entirely changed. The succeeding eight years of his young life were spent in an atmosphere by no means calculated to strengthen a weak intellect or invigorate defective moral powers, to implant firmness against temptation, lessen the force of unsound impulses, or inspire correct views of practical duty. The home influence appears to have become remarkably adapted to foster all that was weak and imperfect in his mental and moral constitution, and to bring into prominence the defects of his character, if not to implant veritable delusions.

The actual amount of injury done to the boy's mind by the hardships to which he had been exposed cannot be accurately estimated. It was probably much greater than could be satisfactorily shown by evidence. The susceptibilities of a weak and timid child continually wrought upon by the terrible ascendancy of a harsh and tyrannical woman, would work fearful effects of terror and confusion. Nothing is more likely than that the reiterated suggestion of a certain doom as impending over the child, by such an overmastering influence, might beget a belief in its truth, and implant itself on his mind with the force of a delusion.

In a mind of this calibre the distinction between an insane de-

lusion and the acceptance of a declaration as an article of belief from mere weakness of mind, is a difficult matter. The manner in which Gabites consistently maintained that he always believed that he should at some time kill either himself or somebody else, inclines me to the conclusion that this belief was of the nature of a delusion. Under the influence of a resentment which excited his weak brain and produced headache, the delusion would recur with additional force, because of the diminished power of resistance, and lead to its own fulfilment. There must have been a psychological reason for the act of bloodshed which took place. If this was not the reason, what was? The existence of an ungovernable temper had never been betrayed—there had never been outbursts of rage or ferocity; viciousness and brutality seemed foreign to the nature of the lad. It seems hardly possible to lay his homicidal act to the score of these qualities. Then, again, the supposition of his being of sound mind brings a strange contradiction to light in the inadequacy of the motive.

The motive assigned was revenge. Lord Byron says: "Revenge is sweet"—but it is sweetest when taken in the full heat of the burning passion which excites it. There are people who, like Shylock, can nurture up a hope and intention of revenge with a malignant coolness; but these loathsome natures are the exceptions of humanity, and there is no trace of such a thing in Gabites. The assignment of revenge as his motive strikingly shows his weakness of mind. He thought he must assign a motive, and revenge seemed to him the most plausible and natural one; but the attributes of revenge were all wanting. He declared he had no spite against Allen—he was very friendly with him, and whilst he was killing him he was saying the Lord's Prayer. Such an explanation has too many inconsistencies to be accepted. His conduct after the commission of the act is equally irreconcilable with the possession of full sanity. A virtuous lad betrayed by deadly revenge into such an extreme would have been seized with an overwhelming flood of remorse and horror. He would either have rushed wildly away in the hope of escaping, or he would have betrayed an emotion quite different in character from what was here displayed. Gabites went calmly and quietly, and detailed with a ludicrous placidity why he gave himself in charge. Left alone in the police-cells at Sheffield by night, he slept soundly. His sleep was uninterrupted by dreams, as his waking hours were undisturbed by visions of ghastly faces streaming with blood which he had shed. No pursuing Nemesis rose to his imagination. He had killed Arthur, and that was all. It had as small an effect on him as if he had killed a cat or a dog. It is true that when he had lain six weeks in Armley Gaol he shed tears and showed emotion when conversing about Allen; but this was subsequent to the labours and instructions of the chaplain, who he said had

taught him much about religion; after he had learnt that "Hell was misery and heaven was happiness." This subsequently elaborated emotion does not neutralise the indication of the previous stolidity. Let us make all allowance due to his immature age, and then ask if it could be possible for a mind in full possession of its intellectual and emotional faculties to manifest the strange indifference displayed by Gabites.

All the phenomena elicited by the examination of Gabites, and the history of his life, lead in the writer's mind to the same conclusion that, in this youth, we have an instance of unsoundness of mind not coming within any legal definition as the law now stands, but established in nature, and therefore claiming a place among the great facts for which some provision should be made, when Law and Nature are thus brought face to face with each other.

It has been often stated in the public journals that the more general acquittal of persons on the ground of insanity would open a door for the escape of criminals not insane, and so lessen the dread of punishment and endanger the safety of society; also that the feigning of madness would be encouraged. The fear of encouraging crime is, I believe, quite groundless. Men are not generally anxious to be considered lunatics—even criminal men. But when unsoundness of mind exists in a criminal, the interests of truth and humanity require that it should be ascertained; and when it is ascertained, justice and fairness require that it should be taken into account in apportioning the sentence to the individual. To assert that graduating the punishment to the qualified responsibility of the agent would weaken its effect as a deterrent, and relax the bridle which restrains other half-demented beings, is a pure assumption. If various degrees of insanity were recognised in our criminal courts, and a scale of punishment awarded according to the measure of responsibility, I submit that the action of the law would be more certain and satisfactory. The hope of escape would be lessened, and its repressive effect strengthened.

The prosecuting counsel in the case of Gabites asked Dr. Williams if he would venture to sign a certificate for the accused. This was a perfectly fair and reasonable question. It was put in the hope of eliciting a negative, and suggesting an absurd discrepancy in the endeavour to prove a person insane for whom the doctor would not sign a certificate of lunacy. This is a fallacious, though strictly legal view of the subject. The signing of a certificate is never required, in the present state of the law, except for the purpose of consigning the patient to a lunatic asylum, and is of no force except under these circumstances. The degrees of insanity now in question might, indeed, be declared in a certificate; but they do not require the patient to be confined. Many of those persons in whom they exist are qualified to discharge the ordinary duties of social and

civil life, and may permanently remain so. So long as nothing disturbs the even tenor of their way they remain harmless and are accounted sane. But when any event rudely shakes their tottering reason, and they are hurried into illegal violence, it is decidedly hard to visit them with the full measure of punishment assigned to those who have their reason entire. It is on the occasion when these outbreaks are either imminent or manifest, and then only, that the recognition of their mental impairment is chiefly required, and can best serve them. On this account the question to be asked and decided in such cases ought to be, not whether the individual was, previous to his commission of the act in question, in such a state of lunacy as to warrant a certificate in its present form being signed for him, but whether he was labouring under any defect of mind sufficient to deprive him of the full amount of responsibility.

There was one feature connected with this trial which differed observably from all others in which the writer has been engaged, when a case which admitted room for doubt was the subject of investigation. The evidence in favour of the prisoner's insanity was received by the crowded audience in the court with marked favour. It can be gathered by other means than words which way the sympathies of an audience incline. In this case they were enlisted on the side of the youth's insanity. Whether this sympathy arose from a clearer conception than formerly of the important truth that there are many degrees of defectiveness and unsoundness of mind below those which are embraced in the phraseology of the law, or whether it was partly due to the juvenile and innocent look of the prisoner, who appeared to be an unconcerned spectator in the scene, is not to be determined. I incline to the former opinion. The prosecuting counsel endeavoured to disparage the medical evidence both of Dr. Williams and myself, by an ironical reference to the case of Dove.* In this attempt he signally failed. Neither judge, bar, nor audience showed the slightest responsive feeling.

Trials like this cannot but have a beneficial result. The immediate effect upon the fate of the individual is of comparatively little consequence. Every such trial gives a wider spread and a deeper insertion in the public mind to the important truth that unsoundness of mind is of an infinite variety of shade and intensity, and that below the clearly marked types of violent madness, delusional incoherence, and imbecility, there is every degree of mental infirmity and moral incapacity. No legal definition has embraced these multiform shades of mental disorder, nor perhaps can it. It is not by any means to be advocated that immunity from punishment should follow the establishment of the slightest degrees of mental impairment. But, on the

* Dove was executed at York Castle. It may be worth recording that the late Mr. Noble, who was then the governor, said to the writer, "If ever a lunatic was hanged, Dove was one."

other hand, it is monstrously unjust that there should be no allowance for any degree of infirmity or incapacity below that of a madness which the casual and unskilled observer can recognise. That these truths are gradually gaining ground, and finding more extensive acceptance, has been evidenced by the tone in which the case of Gabites has been treated in several public journals.*

The harmlessness of the life which the boy had previously led, the glaring insufficiency of the motive, and the strangely cool way in which the desperate deed was perpetrated, followed by the deliberate and painstaking surrender of himself to justice by the perpetrator, afforded presumptive evidence of the boy's insanity to the minds of various writers who knew nothing of him personally.

* It was mentioned by the writer, amongst other proofs of a bad memory and low capacity in Gabites, that though he had been for many years a scholar in a Sunday-school, he could not repeat the names of the first five books of the Bible. That there should be many adults who have paid so little attention to the Bible as to be unable to do this is no marvel; but that an educated gentleman should think it a capital joke to announce his ignorance in this respect is rather singular.

The following letter was received by me a few days after the trial:

“TEMPLE; 21st December, 1866.

“SIR,—I have had the pleasure to-day, for the first time, of discovering that I am mad, and can commit murder with impunity, inasmuch as I am ignorant of the order both of the first five books of the Bible and the Ten Commandments. Two educated gentlemen now with me are also in the same terrible condition; and when the time shall arrive for fulfilling our destiny, and we make you the victim, we trust you will have left for our justification the necessary certificates of our insanity.

“I am, Sir,

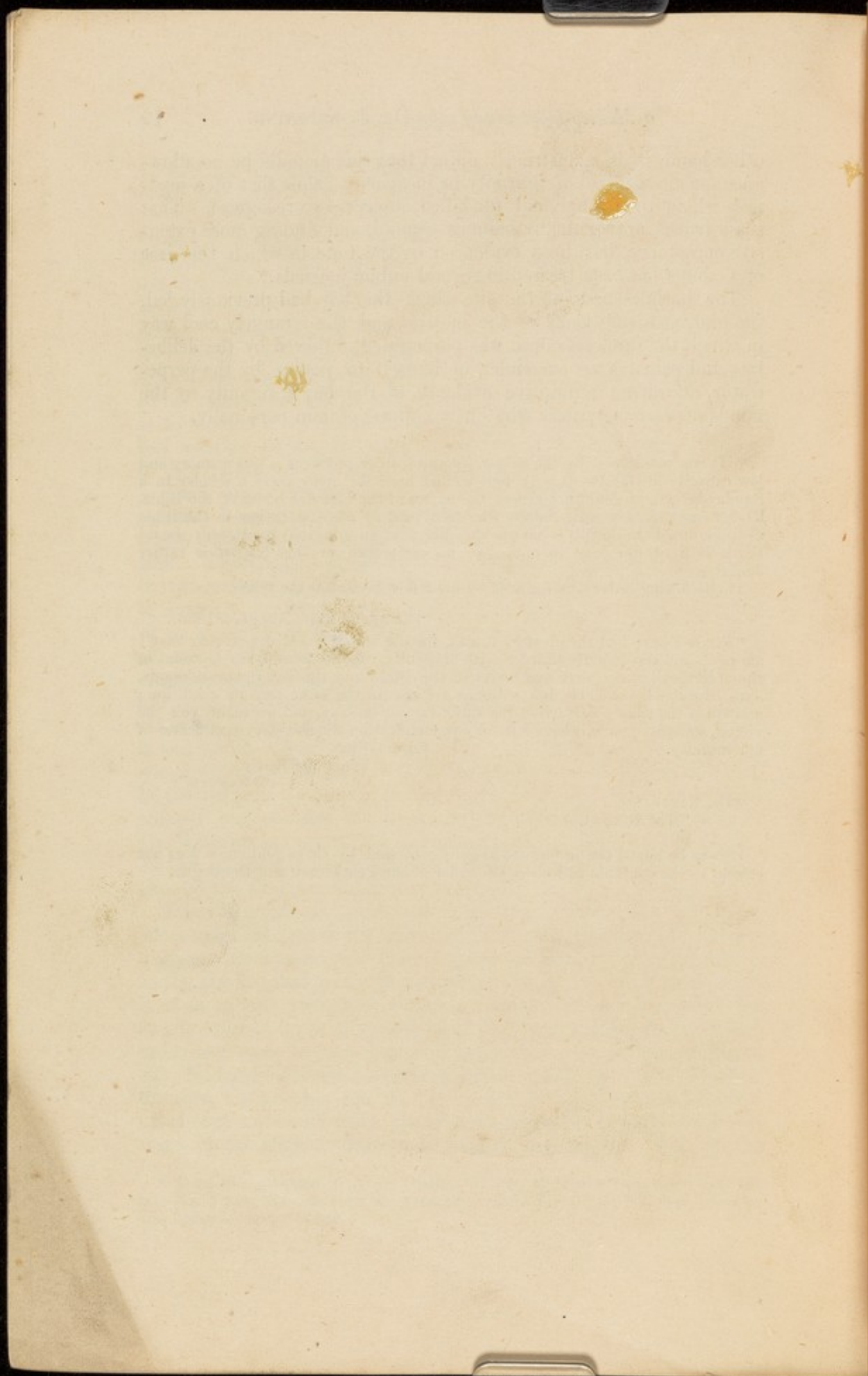
“Yours obediently,

“‘CANTAB.’

“Dr. KITCHING,

“The Retreat, York.”

It is to be hoped the ignorance so gaily professed by these gentlemen does not extend to the contents as well as the order of the Pentateuch and Decalogue.





On the 1st of July, 1867, No. XXVI, New Series, price 2s. 6d.

THE JOURNAL OF MENTAL SCIENCE. Published by authority of the Medico-Psychological Association. Edited by C. L. ROBERTSON, M.D. Cantab., and HENRY MAUDSLEY, M.D. Lond.

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