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MONOGRAPH

ON

MENTAL UNSOUNDNESS.

BY FRANCIS WHARTON.

Surgeon Genl's Office  
U.S. Army  
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## ADVERTISEMENT.

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THE following pages form the First Book in a Treatise on Medical Jurisprudence, about to be published by the present writer, in connection with Dr. Moreton Stillé, of Philadelphia. They are issued in this shape for private circulation only, and this opportunity is taken, to state the indebtedness the writer is under to Dr. JAMES PAUL, for the valuable notes received from him, comprising translations and abstracts from some of the more recent French text writers; and to Mr. CHARLES GOEPP, for similar aid in connection with the German Psychologists.

F. W.

*Philadelphia, June 10, 1855.*



A

# MONOGRAPH

ON

## MENTAL UNSOUNDNESS.

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## CHAPTER I.

## MENTAL UNSOUNDNESS CONSIDERED LEGALLY.

§ 1. Three questions exist in which mental unsoundness becomes a subject of inquiry in the courts of the United States :

I. Capacity to perform particular acts for the disposal of property, such as making contracts or gifts, and executing deeds or wills, in which cases the question is brought up by contesting the validity of the particular act itself.

II. General business capacity, in which case the question arises upon a petition to the chancellor or proper judicial officer of the jurisdiction, for a decree pronouncing the party to be incapable from lunacy or habitual drunkenness, of managing his estate, and transferring the custody of it to a committee.

III. Responsibility for crime.

In each of these relations the tests of unsoundness are distinct. In the first a very modified degree of incapacity will be sufficient, as will presently be seen, when accompanied with fraud, imposition or over exercise of authority, to set aside a contract or to invalidate a will. In the second a much less degree of general capacity is sufficient, than is necessary in the third; for there must always be a number of cases in which a party is morally capable of crime, and yet intellectually incapable of business. Keeping these facts in view, it is proposed to discuss the subject under the following heads :

I. What degree of unsoundness invalidates a contract or will.

- 1st. Imbecility generally, and herein of fraud and compulsion.
- 2d. Partial insanity.
- 3d. Lucid intervals.
- 4th. Intoxication.

II. What is necessary to be proved in order to deprive a party of the management of his estate.

III. What degree of unsoundness avoids responsibility for crime.

## I. WHAT DEGREE OF UNSOUNDNESS INVALIDATES A CONTRACT OR WILL.

§ 2. With regard to lunatics or idiots, in the popular sense, there can be no question in this connection. Upon them the law affixes its visible stamp, and by virtue of a commission of lunacy,<sup>(a)</sup> to be considered under the next head, pronounces them incapable of transferring property. Nor to invalidate their acts is it necessary that a decree of lunacy should have been actually pronounced. The madman, even though his madness be a mere temporary delirium, cannot, by an executory contract,<sup>(b)</sup> bind himself either in person or in property; and consequently in such a class of cases the judgment of the law must relieve him from responsibility. In this respect the test is the same in the criminal and the civil courts. There are, however, a large class of cases in which, as has been noticed, a contract or a will will be declared void, but in which there is a sufficient degree of intellect to create a responsibility for crime. These may be ranked as follows:

- 1st. Imbecility generally, and herein of fraud and compulsion.
- 2d. Partial insanity.
- 3d. Lucid intervals.
- 4th. Intoxication.

*1st. Imbecility generally, and herein of fraud and compulsion.*

§ 3. Of this an illustration may be found in Lord Portsmouth's case, which has been too often erroneously supposed by medical writers to sustain the position, that mere mental debility is enough, by itself, to avoid even the most solemn contract. Lord Portsmouth was married for the second time in March, 1813, to a young woman who was the daughter of one of his trustees, the solicitor of the family, under whose charge he was at the time living. From earliest childhood he had displayed great weakness, both moral and mental, being cruel, timid and fickle in his management of his household, and exceedingly capricious in his tastes. Upon his arrival at twenty-one, however, his incapacity was such, as to induce his family to take steps to put him under the charge of a committee, and at their instance he joined with his father in suffering common recoveries, and making a new settlement of the estate. It was not disputed that he mixed in society generally,

(a) A prior inquisition of lunacy is competent, but not conclusive evidence of incapacity, (*Whitenack v. Striker*, 1 Green C. R. 8,) but even when the jury find that the lunacy was prior to the disputed act, and without lucid intervals, the finding may be collaterally impeached. (*Bannatyne v. Bannatyne*, 15 Jur. 864; 14 English R. 581.)

(b) It should always be borne in mind, that in point of practice there is a great distinction between contracts *executed*, (i. e., those which have already been performed,) and contracts *executory*, (i. e., those whose performance is sought to be enforced.) The latter a court will not in general lend its aid to execute, when the party sought to be effected was at the time a lunatic. But on the other hand, when in good faith a party makes a contract with a lunatic, supposing him to be of sound mind, and it is impossible to restore the parties to their original position, the contract cannot afterwards be rescinded and the purchase money or other consideration recovered back. (See *Beavan v. McDonnell*, 24 English Rep. 486; S. C. 9 Wels. H. & G. 310; *Molton v. Camroux*, 2 Exch. R. 487, 4 Exch. R. 17; see also cases cited, 9 Wels. H. & G. 314, n.) See post, § 11.

corresponded with his friends, and settled his own accounts with his steward. His first marriage was in 1799, and took place under his family's directions, with a lady several years older than himself, who it was understood took a general supervision of his affairs. In the settlement made at that marriage the father of his second wife was one of the trustees. The first wife died in November, 1813, and in February, 1814, Lord Portsmouth went down to London with his medical attendant, and being left in his trustee's hands, a week afterwards contracted a second marriage to the trustee's daughter. In 1823, not until after the birth of a child, which took place in 1822, a commission was issued to inquire into his lunacy, the result of which, after a long contest, was a finding that he was of unsound mind, and had been so since January, 1809. The committee appointed under this procedure immediately filed a petition in the Ecclesiastical court to annul the second marriage. Sir John Nicholl, in deciding the case said, "That considerable weakness of mind, circumvented by proportionate fraud, will vitiate the fact of marriage, whether the fraud is practised on his ward by a party who stands in the relation of a guardian, as in the case of Harford against Morris,<sup>(c)</sup> which was decided principally on the ground of fraud; or whether it is effected by a trustee, procuring the solemnization of the marriage of his own daughter with a person of very weak mind, over whom he has acquired great ascendancy. A person incapable from weakness of detecting the fraud, and of resisting the ascendancy practised in obtaining his consent to the contract, can hardly be considered as binding himself in point of law by such an act. At all events, the circumstances preceding and attending the marriage itself may materially tend to show the contracting party was of unsound mind, and was so considered and treated by the parties engaged in fraudulently effecting the marriage. In respect to Lord Portsmouth's unsoundness of mind, the case set up is of a mixed nature, not absolute idiocy, but weakness of understanding,—not continued insanity, but delusions and irrationality on particular subjects. Absolute idiocy, or constant insanity, would have carried with them their own security; for in either case, the forms preceding, and the ceremony itself, could not have been gone through without exposure and detection; but here a mixture of both, by no means uncommon, is set up,—considerable natural weakness, growing at length from being left to itself and uncontrolled, into practices so irrational and unnatural as in some instances to be bordering on idiocy, and in others to be attended with actual delusion—a perversion of mind—a deranged imagination—a fancy and belief of the existence of things which no rational being, no person possessed of his powers of reason and judgment, could possibly believe to exist. \* \* \* It appeared that in February, 1814, Lord Portsmouth was brought to London by his medical attendant, and delivered up to his trustees, Hanson being one and then in town—that day week he was married to the daughter of Mr. Hanson. The confidential solicitor of the family, one of the trustees, who had a great ascendancy over him, who owed him every possible protection, married him to one of his daughters! It is unnecessary to state the jealousy with which

(c) 2 Hag. Cons. R. 423.

the law looks at all transactions between parties standing in these relations to each other. The whole transaction will bear but one interpretation: every part of it is the act of the Hansons! Lord Portsmouth is a mere instrument in their hands, to go through with the necessary forms; the settlement is begun in forty-eight hours after Lord Portsmouth's arrival in London! The contents of that settlement; the mode in which it was prepared; the concealment of the whole from the friends and the other trustees who were in town, some in the same house with Lord Portsmouth, all these particulars bear the same character. The necessary forms are gone through with, but in support of these mere forms, not a witness is produced to show that this nobleman was conducting himself as a man understanding what he was doing, or capable of judging, or acting as a free and intelligent agent; nothing tending to show he was a person of unsound mind; nothing in his conduct inconsistent with unsoundness of mind; every circumstance conspires to prove that he was the mere puppet of the Hanson family, and that the celebration of this marriage was brought about by a conspiracy among them to circumvent Lord Portsmouth, over whom, they, and particularly the father, had a complete ascendancy, so as to destroy all free agency and rational consent on his part to this marriage. A marriage so had, wants the essential ingredient to make the contract valid—the consent of a free and rational agent. The marriage itself, and the circumstances immediately connected with it, do not tend to establish restored sanity; it was neither 'a rational act' nor was it 'rationally done,'—the whole 'sounds to folly' and negatives sanity of mind. The Hansons, in the mode of planning and conducting the transaction, show that they treated and considered Lord Portsmouth as a person of unsound mind, and Lord Portsmouth in submitting and acquiescing, and not resisting, confirms his own incompetency. Even if no actual unsoundness of mind, strictly so called—if no insane derangement existed—if only weakness of mind—and all admit that he was weak—yet considering the passiveness and timidity of his character on the one hand—the influence and relation of Hanson, his trustee, on the other—and the clandestinity and other marks of fraud which accompanied the whole transaction—I am by no means prepared to say, that without actual derangement in the strict sense, the marriage would not be invalid—but in my judgment Lord Portsmouth was of unsound mind, as well as circumvented by fraud."(*d*)

§ 4. While, therefore, the learned judge before whom this case was heard came to the conclusion that Lord Portsmouth was of "unsound mind," the position was broadly taken by him that weakness alone, when circumvented by fraud, would be sufficient to invalidate even so solemn a contract as marriage, and on this position his decision in part rested. Still more unequivocal was the decree of the Privy Council in dismissing an appeal from the Court of Chancery of the Isle of Man, setting aside two deeds, on the ground that the grantor in both of them was of unsound mind at the time he executed them, and that they were obtained from him by fraud and undue means. The evidence showed that the grantor, an old man, feeble both in body and mind, separated from all his relations, without a friend to advise him, and surrounded

(*d*) Portsmouth v. Portsmouth, 1 Hag. Ec. R. 355.

by those only who were contriving to get his fortune, conveyed away nearly all that he was possessed of, even the house he lived in, to persons not related to him, either in blood or connection: and all his estate in lease was to become the property of the same strangers after his death. The consideration of £100 was inserted for conveying away property worth £1400; and this was not to be paid to the grantor, but to his executor after his death, without any interest being charged on it in the meantime. Lord Wynford in giving the opinion of the Privy Council said, that the law would “not assist a man who is capable of taking care of his own interests, except in cases where he has been imposed upon by deceit, against which ordinary prudence could not protect him. If a person of ordinary understanding, on whom no fraud has been practised, makes an improvident bargain, no court of justice can release him from it. Inadequacy of consideration is not a substantial ground for setting aside a conveyance of property. But those, who from imbecility of mind are incapable of taking care of themselves, are under the special protection of the law. The strongest mind cannot always contend with deceit and falsehood; a bargain, therefore, into which a weak one is drawn under the influence of either of these, ought not to be held valid, for the law requires that good faith should be observed in all transactions between man and man. If this conveyance could be impeached on the ground of the imbecility of the grantor only, a sufficient case has not been made out to render it invalid; for the imbecility must be such as to justify the jury, under a commission of lunacy, in putting his property and person under the protection of the Chancellor; *but a degree of weakness of intellect far below that which would justify such a proceeding, coupled with other circumstances to show, that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed.*”(e) This same view has been uniformly acted on in the English and American courts, and it is expressed by Mr. Justice Story with his usual precision.(f) “The acts and contracts of persons who are of weak understandings, and who are thereby liable to impositions, will be held void in courts of equity, if the nature of the act or contract justify the conclusion, that the party has not exercised a deliberate judgment, but has been imposed upon, circumvented or overcome by cunning or undue influence.”(g)

§ 5. With even greater emphasis has the same doctrine been announced by courts of law in respect to wills. Peculiarly liable as is a dying man, even though his intellect be of average strength, to have his comfort destroyed, if not his purpose overturned, by those in whose society he is placed, the policy of the law has anxiously sought for every safeguard by which such intrusions upon the sanctity of dissolution, as well as upon the rights of families, can be deprived of motive. “The same memory for the making of a will,” agreed all the judges of England at an early date, “is not at all times when the party can answer to any thing with sense, but he ought to have judgment to discern and to be of perfect memory, otherwise the will is void.”(h) “He ought to have a disposing memory,” said Lord Coke, “so that he is able to

(e) *Blachford v. Christian*, 1 Knapp's Rep. 73; *Shelford on Lunacy*, 272.

(f) 1 Story Eq. Juris. § 238.

(g) See also 1 Fonbl. Eq. B. 1, ch. 2, § 3.

(h) *Combe's case*, Moore R. 759.

make a disposition of his lands with understanding and reason: and that is such a memory as the law calls sane and perfect.”(i) While, therefore, it is only necessary that there should be the capacity of reasonable disposition, great jealousy has been exercised for the correction of extraneous influence on the testator. Thus wills have been set aside when they were preceded by over-importunity of friends standing in confidential relations,(j) where the housekeeper and physician were shown to have earnestly urged a non-natural scheme of distribution;(k) where the wife in fact dictated the will, the testator being at the time unable to speak, she pretending to understand him, and making herself the sole devisee for life, and imposing as a devisee in remainder a fictitious niece;(l) where one relation produced the disinheretance of another by false representations as to his character;(m) where the testator was old and feeble, and the will was made under the direction and to suit the purposes of a colored woman in the family,(n) and where a husband exercised coercion.(o) In short, whenever the provisions of a will are inconsistent with natural justice, it will require strong proof of capacity and volition to sustain it, and slight proof of undue influence or fraud to set it aside.(p) Where a presumption of imposition exists, e. g., from the fact of the penman of the will taking a pecuniary benefit under it, the courts exact “the most decisive proof of the complete absence of influence and excitement at the preparation and making of the asserted will, and must require unimpeachable evidence of unbiassed volition and of clear capacity, and must expect it to be shown by instructions coming from the deceased himself.”(q) To authorize a will in favor of a wife, however, to be set aside, the influence alleged to have been exerted must be shown to have reached coercion, destroying the husband’s free agency,(r) or fraud itself must be proved.(s) In ordinary cases also, it will not be enough

(i) Marquis of Winchester’s case, 6 Rep. 24; 2 Buls. 211. The same point is put with still greater simplicity by Judge Washington: “Had he a disposing memory—was he capable of recollecting the property he was about to bequeath—the manner of distributing it and the objects of his bounty.” (Stevens v. Vanclerc, 4 W. C. C. R. 262.) Proof, however, of intellect having been impaired by disease, or of intellectual feebleness alone, will not avail by itself to defeat a will, when adequate capacity remains. Sloan v. Maxwell, 2 Green. Ch. 563; Andrews v. Weller, *ibid.* 604; Dunick v. Reichenback, 10 S. & R. 84. The cases will be found enumerated in 1 Powell on Devises, 127; Shelford on Lunacy, 275-6; 4 Kent’s Com. 566; 1 Jarman on Wills, 28. See also Converse v. Converse, 21 Vt. 168; Horne v. Horne, 9 Ired. 99; Harrison v. Rowan, 3 W. C. C. R. 580; Grabil v. Barr, 5 Barr, 441; Denu v. Johnson, 2 South. 454; Kinne v. Kinne, 9 Conn. 102; Ford v. Ford, 7 Humph. 92; Howard v. Coke, 7 B. Monr. 655; Blanchard v. Nestle, 3 Denio, 37; Modern Probate of Wills, 91. In Scotland an arbitrary test is applied, it being there provided that no settlement or gift executed after the commencement of the disease of which a person dies, except those in the ordinary administration of the estate, shall be valid. If the testator survives sixty days afterwards, or has been to market unsupported, the will is validated. Bell’s Dict. “Death Bed.”

(j) Hacker v. Newborn, Style, 427.

(k) *Ex parte* Fearon, 5 Ves. 633.

(l) Scribner v. Crane, 2 Paige C. C. R. 147.

(m) Dietrick v. Dietrick, 5 S. & R. 207; Nussear v. Arnold, 13 S. & R. 323; Patterson v. Patterson, 6 S. & R. 55.

(n) Deuton v. Franklin, 9 B. Monr. 28. (o) Marsh v. Tyrel, 2 Hag. Ec. 84, 141.

(p) Brydges v. King, 1 Hag. Ec. R. 256; Goble v. Grant, 1 Green C. R. 629; Baker v. Lewis, 4 Rawle, 356.

(q) Dodge v. Meech, 1 Hag. E. R. 620; Barry v. Butlin, 1 Curtis, 637; see 2 Jarman on Wills, (Am. ed.) 421.

(r) Clarke v. Sawyer, 3 Sanf. Ch. R. 351; Gardiner v. Gardiner, 22 Wend. 526.

(s) Scribuer v. Crane, 2 Paige C. R. 147.



to prove mere influence, without proof of fraud or contrivance,<sup>(t)</sup> or such coercion as destroys free agency.<sup>(u)</sup> "Honest intercession and persuasion," "and fair and flattering speeches," though abundantly proved to have been used, do not affect the instrument's validity.<sup>(v)</sup> The fact of the paper being entirely in a party's handwriting gives a strong presumption of sanity, which is not effaced by proof of generally impaired intellect, nor by the fact, that when the paper is a will, in its omissions of property exist.<sup>(w)</sup> The same presumption exists when the testator has a distinct recollection, at the time of the execution of the will, of the terms he directed at the time it was prepared.<sup>(x)</sup>

§ 6. It is obvious, therefore, that no fixed minimum of capacity can be determined upon, which will be necessary to sustain a contract or will. While, on the one hand, it is clear that a madman or a drunkard, during the prevalence of the insane or drunken delusion is totally incompetent for such a purpose, it is equally clear that persons whose intellects are abundantly strong enough to create an entire responsibility for their acts in a criminal court,<sup>(y)</sup> will yet be held incompetent to pass away their property, when it appears undue influence or fraud has been used upon them to produce an unjust result.

§ 7. The existence of idiocy, when that alone is set up, can be determined by comparatively simple tests. If the pretended idiot can be shown to have intelligently performed acts of business during the period in which idiocy is claimed to exist, the allegation of incompetency falls, unless fraud or constraint be shown. Thus in a case determined in Doctors' Commons in March, 1852,<sup>(z)</sup> Dr. Lushington said, "Before entering upon this branch of the case, I must bear in mind what the nature of the case set up in opposition to the will is. I must repeat that it is not lunacy—it is not monomania—it is not any species of mental disorder, the symptoms of which it may, at periods, be difficult to detect; but the case presented is that of idiocy or imbecility, the characteristic of which is permanence, with little or no variation, though often, in case of idiots, it does sometimes happen that there will be a greater degree of excitement demonstrated than at other periods. How is such a case to be met? I apprehend, to meet it and to show that such a state of things did not exist at any given period, proofs of acts of business are most important evidence. Many acts of business could possibly be done by a lunatic, and the lunacy not detected; but it is scarcely possible to predicate the same of an idiot or lunatic, or an imbecile person. I shall look, therefore, in the first instance, to the acts of business. It is proved by Mr. Falkner, that the deceased kept an account with Messrs. Tuckwell, at Bath, for four years, from 1818 to 1821, and during all that period, occasionally drew drafts, and all those drafts were paid to himself over the counter. According to

(t) *Lowe v. Williamson*, 1 Green C. R. 82; *Blanchard v. Nestle*, 3 Denio, 37; 1 Jarman on Wills, (2d Am. ed.) 36; 1 *Williamson on Exs.* (2d Am. ed.) 37.

(u) *Brown v. Mollison*, 3 Wh. 129; *Potts v. House*, 6 Georg. 324; *Woodward v. James*, 3 Strob. 552; see 1 Jarman on Wills, (2d Am. ed.) 36.

(v) 1 Jarman on Wills, (2d Am. ed.) 37.

(w) *M-Daniel's Will*, 2 J. J. Marsh, 331; *Fullock v. Allison*, 3 Hag. 527.

(x) *Hathorn v. King*, 8 Mass. 371.

(y) See *M-Taggart v. Thompson*, 2 Harris, 149.

(z) *Bannatyne v. Bannatyne*, 16 Jur. 864, 14 English R. 581.

the evidence, the deceased came himself to the counter, and there is no proof of any one accompanying him on such occasions; he asked for the sum he wanted; the clerk filled it in, he signed it, and took the money. Surely no idiot could have done this, for he must have exercised thought to go to the bank, memory and judgment as to the thing required; and moreover, his conduct and demeanor could not at such times have been as described by the witnesses against the will, or, from the glaring colors in which his imbecility is depicted, it must have been discovered, and the business never could have been transacted at all.

\* \* \* I consider these transactions, then, of first rate importance towards solving all the difficulties of this case; for here, after the lapse of about thirty years, the court has the advantage of facts proved, with the dates duly affixed to them. There is, I must say, not the least evidence to show that in any one of these acts of business the deceased was assisted by any person whatever, the presumption is the other way; and to put these acts upon the very lowest basis on which they can be placed, they do utterly disprove idiocy or imbecility. I will simply repeat what I have already indeed said, that those who are afflicted with lunacy, sometimes have the management of, and can manage, their pecuniary affairs—an idiot, never.”

§ 8. It should be kept in mind, that the question of competency is intimately affected by the character of the act or instrument which it is sought to annul. A reasonable marriage, such as that of Lord Portsmouth to his first wife, entered upon under the advice of his family, and to a person every way competent to secure his position and his character from disgrace or injury, may be sustained; while an unsuitable one, to a woman of light character, will be set aside, when it appears that it was influenced by overpowering authority or trickery. A will, making a just distribution of an estate, will be held *per se* strong evidence of disposing capacity, while one turning the testator's property into an unnatural channel, gives at least some presumption to the contrary.<sup>(a)</sup> This is broadly stated by Sir John Nicholl in a recent case,<sup>(b)</sup> where he declares, that where a will is traced into the hands of a testator whose sanity is fairly impeached, but of whose sanity or insanity at the time of doing or performing some act with relation to the will, there is no direct evidence, the agent is to be inferred rational, or the contrary, from the character of the act.<sup>(c)</sup>

§ 9. In all cases except those when the act sought to be annulled was committed during actual insanity, the question is not whether the party had a capacity to do the particular thing intelligently, but whether he had capacity and information enough to comprehend and disregard any attempt which may have been made to coerce or deceive him. Precedents and authority on this branch of law, consequently, must stand by themselves, and cannot be considered as applying to the more important part of the present chapter, where this subject of responsibility for criminal offences is considered.

(a) *Stewart v. Lispenard*, 26 Wend. 255; *Means v. Means*, 5 Strobh. 167; *Roberts v. Trawick*, 13 Alab. 68; *Couch v. Couch*, 7 Alab. 519; *Bannatyne v. Bannatyne*, 16 Jur. 864, 14 English Rep. 581.

(b) *Scruby v. Fordham*, 1 Addams, 90.

(c) See generally 1 Jarman on Wills, (2 Am. Ed.) 69.

Mr. Shelford's views in this point are worthy of grave consideration. "One person," he says, "seeing a testator in extreme age, or under extreme sickness, thinks that if he knows those about him, and can answer an ordinary question with respect to the state of his illness, or his wants, such and similar matters render him capable of giving effect to a disposition by will, however complicated it may be, by the mere formal execution of the instrument; while another person may be of opinion, that though a testator, in the ordinary management of his affairs, can hold reasonable conversation, can fully comprehend all the usual and simple transactions of life, yet, if he is unable to take the active management of all his concerns, however involved those concerns may be, or if he is liable to become confused by entering into intricate transactions, he is totally incapable, and cannot enter into a testamentary disposition, however plain and simple it may be. Now, when opinions are formed by such opposite standards, it is obvious much contrariety will occur. Sir John Nicholl observed that experience in the Ecclesiastical Court teaches us, that evidence upon questions of capacity is almost always contradictory, such evidence being commonly that of opinion merely; and this contrariety proceeds from the obvious grounds, that of the witnesses, no two, possibly, have seen the party whose estate is deposed to, at precisely the same circumstances; and that each, again, of the several witnesses, no matter how numerous, measures, possibly, testamentary capacity by his own particular standard. These sources of discrepancy, and many more might be enumerated, are common to all cases of this description. There is an additional source, when the transaction of which they have to speak is remote, a circumstance sufficient in itself to account for no inconsiderable degree of contrariety of evidence, even where the witnesses have to speak of facts merely, and not of opinions formed and inferences built upon facts, of which most of the evidence furnished upon questions of capacity is commonly made up. If the Court, therefore, on questions of capacity, is accustomed to rely but little upon such evidence, so far as it is that of mere opinion, but to form its own judgment from the facts and the conduct of the parties at the time, it becomes it to do so, more peculiarly when much of the evidence not merely consists of opinions delivered long subsequently to the transactions which they profess to have suggested them, upon loose recollections, too, and after repeated discussions of the subject matter with interested parties."(*d*)

§ 10. The lowest test of capacity was applied in a very much contested case in New York, which is cited at large by Dr. Beck, and which excited great interest from the immense property at stake, and the respectability of the parties. It was there ruled,—and for the facts it is not necessary to do more than refer to the pages of the report, or to Dr. Beck's excellent summary,—that where a female had been always under the control of her friends, had never attempted to transact business, and manifested intellect and understanding only to a very low degree, a will executed by her in favor of a relative with whom she had spent the latter portion of her life, which was in accordance with intentions previously expressed by her, which was reasonable in itself, and

the object of which she understood, was valid, though it did not appear that she had given previous instruction for the draft of the will.(e) The authority of the case, it is true, is greatly weakened by the fact that it was decided by a vote of 12 to 6 of the Court of Errors of New York, which, under the constitution then in force, was the Senate of the State, and being chiefly a lay court, never possessed high professional authority, and which in the present instance reversed a decision to the contrary of the late very able Chancellor. Without regarding this case, therefore, as of great weight, so far as the authority of the senators who concurred with the majority are concerned, it may nevertheless be cited as a powerful illustration of the reluctance felt in both the professional and popular mind to overturn a will which in itself is in accordance with common sense and proper feeling.

§ 11. Upon similar principles the contracts of a person claimed to be imbecile or lunatic, are to be tested. An important distinction, however, is to be noticed in this respect. While on the one hand the courts will not lend their aid to *execute* or carry into effect a contract entered into by an incapable person, unless, perhaps, for necessaries,(f) where the fact of incapacity was known to the creditor; yet such is not the law when the incapacity was unknown, and no advantage has been taken, particularly when the contract has been in part executed.(g) "Where a person," says Pollock, C. B.,(h) "apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property which is fair and bona fide, and which is executed and completed, and the property, the subject matter of the contract, has been paid for and fully enjoyed, and cannot be destroyed, so as to put the parties in *statu quo*, such contract cannot afterwards be set aside, either by the alleged lunatic, or those who represent him."(i) It is true that the leaning of American authority was for some time towards the position that the contracts of a lunatic, executed or unexecuted, were *per se* void, unless for necessaries;(j) but more recently the justice of the exceptions already noticed have been recognized.(k) Nothing, however, but a strong case of fairness, innocence, and fullness of consideration, can validate a deed when the grantor is insane.(l)

§ 12. Testamentary incapacity does not necessarily presuppose the existence of insanity, in its technical sense. Weakness of intellect from extreme old age, whether arising from great bodily infirmity, or from intemperance, when it disqualifies the testator from knowing or appreciating the nature, effect, or consequences of the act he is engaged in, works a similar disability.(m) Great caution, indeed, should be used,

(e) See 2 Beck's Med. Jur. 828, &c.; *Stewart v. Lispenard*, 26 Wend. 255.

(f) Chitty on Contracts, 112; Story on Contracts, § 27; Addison on Contracts, 873.

(g) *Molton v. Camroux*, 4 Exch. 17; S. C. 2 Exch. R. 49. See *ante* § 2.

(h) 2 Exch. 503.

(i) See also *Beavan v. McDowell*, 24 English R. 486; 9 Wells, H. and G. 309.

(j) *La Rue v. Giltyson*, 4 Barr, 375; *Mitchell v. Kingman*, 5 Pick. 431; *Rice v. Peet*, 13 Johns. 543; *Grant v. Thompson*, 4 Connect. 103; *Long v. Whidden*, 2 N. H. 435; *Fitzgerald v. Reed*, 9 Sm. & Mar.; *Caever v. Phelps*, 11 Pick. 304.

(k) *Beals v. See*, 10 Barr, 56.

(l) *Desilver's Est.* 5 Rawle, 11; *Bonsall v. Chancellor*, 5 Wharton R. 37.

(m) *Leech v. Leech*, 11 Penn. Law J. 177. See in this connection Dr. Day's "Practical Treatise on the Domestic Management of the Most Important Diseases of Advanced Life." T. & W. Boome, London. 1849.

lest the existence of extreme old age should lead the medical witness to presume consequent imbecility. Against such a sequence the policy of the law and the interest of humanity unite in protesting. "It is one of the painful consequences of extreme old age," very beautifully said Chancellor Kent, in one of his earlier judgments, "that it ceases to excite interest, and is apt to be left solitary and neglected. The control which the law still gives to a man over the disposal of his property, is one of the most efficient means which he has in protracted life to command the attention due his infirmities. The will of such an aged man ought to be regarded with great tenderness, when it appears not to have been procured by fraudulent acts, but contains those very dispositions which the circumstances of his situation and the course of the natural affections dictated."<sup>(n)</sup>

In harmony with these views, wills have been sustained when the testator was eighty years of age, very deaf, and partially blind;<sup>(o)</sup> where he was of the same age, and was afflicted with a palsy, so that he could neither write nor feed himself;<sup>(p)</sup> and when he was between ninety and a hundred, and greatly debilitated.<sup>(q)</sup> It is true that when in old age the testator is shown to have been imposed upon or coerced, the will will be set aside; but this rather tends to strengthen than invade the sanctity of the testamentary privilege.<sup>(r)</sup>

The same view is to be taken of the bodily infirmities peculiar to old age. If they produce mental debility, of course, they work incapacity. But their mere existence will not be sufficient to produce this result. As long as can be done so consistent with public justice, the policy of the law requires that the protection to old age, afforded by the right of testamentary disposal, should continue unimpaired; and it is permitted to cease only when actual wrong would be done to third parties by its continuance, or where, by exposing the possessor to undue solicitation or to imposition, it proves an annoyance rather than an advantage. Nor is this rule without its foundation in the results of observation. The truth that the mind is not necessarily affected by bodily infirmity, is illustrated by numerous cases, one of the most striking of which is that of Dugald Stewart, who when unable from disease to take general exercise, to use his right hand, or to articulate distinctly, composed the third and fourth volumes of his *Philosophy of the Human Mind*.

§ 13. While a person blind, or deaf and dumb, is fully competent to make a will, the burden is upon the party setting the will up to prove that the testator knew the contents of the will, and was not imposed upon.<sup>(s)</sup> It has been questioned whether a person who was both blind and deaf and dumb, is competent to execute any instrument requiring consideration,<sup>(t)</sup> though in a late South Carolina case the possibility of a contrary view seems to be intimated.<sup>(u)</sup> And however wisely such may have been held to be the law at a time when to be deaf, dumb, and blind was equivalent to being utterly deprived of the avenues of perception, such can hardly be considered to be the case now, when to that

(n) *Van Alst, v. Hunter*, 5 John. Ch. 148.

(o) *Lowe v. Williamson*, 1 Green Ch. 82.

(q) *Van Alst, v. Hunter*, 5 Johns. Ch. 148.

(s) 1 Jarman on Wills, (2d Am. Ed.) 48.

(u) *Reynolds v. Reynolds*, 1 Spear, 756-7.

(p) *Reed's Will*, 2 B. Monr. 79.

(r) 1 Jarm. on Wills, (2d Am. Ed.) 53.

(t) *Ibid.*

unfortunate class a method of communication has been opened which may fit them to sustain and appreciate the relations of society.

### 2nd. *Partial Insanity.*

§ 14. It was for a long time the law in England, and remains so still in most of the American States, that proof of the existence of partial insanity is insufficient to defeat a will, unless the will be its direct offspring: provided that, at the time of making the will, the testator be sane in other respects upon ordinary subjects.<sup>(v)</sup> "It appears to me," says Mr. Justice Sergeant, in delivering an opinion of the Supreme Court of Pennsylvania in 1839,<sup>(w)</sup> "that the only question in such a case is, whether the person was of sound memory and discretion, considering the act done in all its bearings, and judging of the soundness of the mind of the supposed testator by his conduct and declarations at the time, and as connected with his previous insanity, and the degree of restoration of mind in the interval; and that if the erroneous and groundless impressions, received during the time of his delirium, shall retain their hold, (whether by some physical derangement of the brain, or by some indelible stamp on the thinking faculties,) that person must be considered still under a delusion—the effect continues, and it is only by effects we can judge of the existence of the exciting cause—and if he is under a delusion, though there be but a partial insanity, *yet if it be in relation to the act in question, it is well settled it will invalidate contracts generally, and defeat a will which is the direct offspring of this partial insanity.*"

The converse of this result, depending, however, on the same principle, is illustrated by a case decided by Judge King, in Philadelphia, in 1851, remarkable as being the last judgment of that eminent and clear-headed judge, who was then closing a judicial career of twenty-seven years' duration. "A monomaniacal delusion," he said, "inveterately entertained by a testator against one who would otherwise have been the natural object of his bounty, and shown to be the reason which has excluded him from it, and to have had no other existence except in the distempered imagination of the testator, would invalidate a will made under such influence. And for the very plain reason that a will made under the suggestion of such an insane delusion, is not what the law requires a will to be, the product of a mind capable of reasoning rightly. For although the law recognizes the difference between general and partial insanity, yet if the will has been made under the influence of such partial insanity, and as the product of it, it is as invalid as if made under the effects of an insanity never so general. Eccentricities of conduct, absurd opinions, or belief in things appearing to us extravagant, although they may be and are evidences of testamentary incapacity, do not constitute it necessarily and in themselves. A man may believe in witches and witchcraft, as it seems this testator did, or like him he may have believed his health to have been permanently affected by

<sup>(v)</sup> Shelford, Lunacy, 41, 296; 1 Jarm. on Wills, (2d Am. Ed.) 58.

<sup>(w)</sup> Boyd v. Eby, 8 W. 70.

slow poisons surreptitiously administered to him, and yet be competent to make a will, where such will is not shown to have some connection with such absurd opinions or extravagant belief, and where the mind is shown to be in other respects sound and vigorous, and the judgment intelligent and clear. This testator was upwards of eighty-three years old when he died, and consequently received his early impressions when the belief in witches and witchcraft still lingered among persons of a much higher social position, and of much better education than himself. Colonial America either inherited from the mother country, or received from the emigration of continental Europe, this absurd notion. Pennsylvania did not so far escape the general contagion as to make it very surprising that a man in the condition of life occupied by the testator, born before the American Revolution, should have participated in it.”(x)

§ 15. The English rule was for a long time considered settled on the same basis, and was set forth with great fullness by the Prerogative Court, during Sir J. Nicholl’s presidency.(y) The question there was as to the testamentary capacity of a gentleman named Stott, an eminent electrician, who had an only child, against whom he had, without cause, imbibed an uncontrollable disgust and aversion, which manifested itself in acts of great cruelty and oppression, and ultimately in a will by which she was cut off in favor of collateral relations. Sir J. Nicholl pronounced against the will, saying, “The deceased’s state of mind at the time of making his will, is intimately, I think, connected with his state of mind on the subject matter of his will—understanding by this, the disposal, by will, of his property. If the deceased were at *all* times of unsound mind on the subject matter of his will, he *must* have been of unsound mind at *the* time of making his will. To suppose the contrary would be to suppose the deceased both sane and insane at the *same* time and on the *same* subject; a supposition, I apprehend, equally absurd in a legal and moral point of view. And, subject to these considerations, the question in the end to be determined, the point at final issue is,—not whether the deceased’s insanity in certain *other* particulars, as proved by the daughter, should have the effect of defeating a will, *generally*, of the deceased, or even this *identical* will—but it is, whether his insanity, on the subject of his daughter, *as*, also proved by the daughter, should have the effect of defeating, not so much any will, (*a* will, *generally*,) of the *deceased*, as this *identical* will—and to the decision of that question I am to be understood as solely addressing myself in the following observations :

“Now the daughter being in this case the sole next of kin, the deceased’s only child, it is quite impossible, I think, to disconnect the daughter from the subject matter of his will, that is of his property—they are subjects, in effect, identified. Hence the deceased’s insanity on the subject of his daughter, *generally speaking*, being proved at *all* times, in my judgment, it follows that his insanity, at the time of making his will, is also proved, in my judgment—unless the contrary is to be inferred from the will itself. But the inference furnished by the

(x) *Leech v. Leech*, 11 Pa. L. J. 179.

(y) *Dew v. Clark*, 1 *Addams*, 279; 2 *Ibid.* 102; 3 *Ibid.* 79.

will itself, (and it is for this only that I refer to the dispositive part—to the contents of the will at all,) is quite the other way. For the prominent feature of the deceased's insanity, in respect to the daughter, was aversion or antipathy to the daughter, so pleaded and so proved; and the will is a will plainly inofficious, so far as regards the daughter, being a will by which she is, in effect, disinherited—disinherited, too, in favor of parties nearly utter strangers to the deceased, (for so it appears,) though not remotely connected with him by blood, being his sister's children. Therefore it follows that, in my judgment, the deceased is proved, upon the whole matter, to have been insane at the time of his making this will: which was the daughter's case. \* \* \* Had the contents of the will furnished a contrary inference—had the will, so far as respects the daughter, been in all parts of it, an officious will, the conclusion on this head, and so upon the whole case, *might* have been different; the very contents of the will would in that case have inferred that however partially insane (insane on the subject of his daughter,) the deceased might have been, generally speaking, still, that such partial insanity was not in actual operation at the time of his making the will, in which respect the will *might* have been valid. \* \* \* It has been said repeatedly by the counsel for the residuary legatees, that this 'partial insanity' is a something unknown to the law of England. Now if it be meant by this, that the law of England never deems a person both sane and insane at one and the same time, upon one and the same subject, the assertion is a mere truism, (as well, indeed, in reason as in law,) and as such is incapable of being effectively opposed. At the same time, as no such sort of partial insanity is set up by the daughter, the case of partial insanity which she has *really* undertaken to sustain, is at no risk from the truth of that position, so understood, being conceded. But if, by that position, it be meant, and intended, that the law of England never deems a party both sane and insane at *different* times, upon the *same* subject; and both sane and insane at the same time upon *different* subjects—(the most usual sense, this last, of the phrase '*partial insanity*,' and the one in which I take it to have been used throughout, by the counsel for the next of kin,) there can scarcely be a position more destitute of legal foundation; or rather, there can scarcely be one more adverse to the streams and current of legal authority." The learned judge sustained himself by the authority of Locke, who says, "A man who is very sober, and of a right understanding in all other things, may in *one* particular, be as frantic as any man in Bedlam;" and of Lord Hale, who expressly declares "there is a partial insanity of mind, and a total insanity. The former is either in respect to things, [*quoad hoc, vel quoad illud insanire*—some persons, that have a competent use of reason in respect to some subjects, are yet under a particular *dementia* in respect of some particular discourses, subjects, or applications], or else it is partial in respect of degrees; and this is the condition with very many, especially melancholy persons, who, for the most part, discover their defect in excessive fears and grief, and yet are not wholly destitute of the use of reason."

§ 16. It is true, that when in the same case a bill of review was applied for to Lord Chancellor Lyndhurst, he limited with evident caution his approval of the judgment of Sir J. Nicholl in such a way as to re-



serve the question of partial insanity as above stated. "I have read his judgment," he says,<sup>(z)</sup> "with great attention; and I collect from it that his meaning is this: that there must be unsoundness of mind to invalidate a will, but that the unsoundness may be evidenced in reference to one or more subjects. All that the learned judge meant to convey was, that it was no objection to the imputation of unsoundness, that it manifested itself only or principally with reference to one particular question, or one particular person."

§ 17. But in 1848, in a very remarkable case before the Privy Council, an opinion was delivered, without dissent, by Lord Brougham, as the judgment of himself, Lord Langdale, Dr. Lushington, and Mr. T. Pemberton Leigh, in which the notion of partial insanity on one point as consistent with testamentary capacity, was explicitly repudiated.<sup>(a)</sup> It is true that the case was one in which the same result could have been reached even on Sir J. Nicholl's reasoning. The testatrix, who was advanced in years, was excessively penurious and eccentric, was extremely irritable, wrangled with her servants to an excess, at times indulged in very obscene conversation, believed herself the object of various amorous enterprises, and among others from Lord Melbourne, and Lord J. Russel, who she believed prowled about the house as fish-women. All this, and more, on Sir J. Nicholl's hypothesis, might have been consistent with a testamentary capacity. But in addition to this, it was shown that the testatrix had an insane delusion that her brother, whom she disinherited, had joined the Catholics, to whom she had an aversion, and haunted her house, also in disguise. Certainly, even on the theory of partial insanity, this, coupled as it was with an inquisition of lunacy, would have been enough to have vacated the will. But Lord Brougham, in delivering the judgment of the Privy Council, went further. "The question being," he said, "whether the will was duly made by a person of sound mind or not, our inquiry, of course, is, whether or not the party possessed his faculties, and possessed them in a healthful state. His mental powers may be still subsisting, no disease may have taken them away, and yet they may have been affected with disease, and thus may not have entitled their possessor to the appellation of a person whose mind was sound.

"Again, the disease affecting them may have been more or less general; it may have extended over a greater or a less portion of the understanding, or rather, we ought to say, that it may have affected more, or it may have affected fewer of the mental faculties. For we must keep always in view that which the inaccuracy of ordinary language inclines us to forget, that the mind is one and indivisible; that when we speak of its different powers or faculties, as memory, consciousness, we speak metaphorically, likening the mind to the body, as if it had members or compartments, whereas, in all accuracy of speech, we mean to speak of the mind acting variously, that is, remembering, fancying, reflecting, the same mind in all these operations being the agent. We therefore cannot in any correctness of language speak of general or partial insanity; but we may most accurately speak of the mind exerting itself in consciousness without cloud or imperfection; but

(z) 5 Russ. Ch. Cases, 163.

(a) Waring v. Waring, 6 Moore P. C. Cases, 349.

being morbid when it fancies; and so its owner may have a diseased imagination, or the imagination may not be diseased, and yet the memory may be impaired, and the owner be said to have lost his memory. In these cases we do not mean that the mind has one faculty, as consciousness, sound; while another, as memory or imagination is diseased; but that the mind is sound when reflecting on its own operations, and diseased when exercising the combination termed imaginary, or casting the retrospect, called recollecting.

“This view of the subject, though apparently simple, and almost too unquestionable to require, or even to justify a formal statement, is of considerable importance when we come to examine cases of what are called, incorrectly, ‘partial insanity,’ which would be better described by the phrase ‘insanity,’ or ‘unsoundness,’ always existing, though only occasionally manifest.

“Nothing is more certain than the existence of mental disease of this description. Nay, by far the greater number of morbid cases belong to this class. They have acquired a name;—the disease called familiarly, as well as by physicians, ‘Monomania,’ on the supposition of its being confined, which it rarely is, to a single faculty or exercise of the mind: a person shall be of sound mind, to all appearance, upon all subjects save one or two, and on these he shall be subject to delusions,—mistaking for realities the suggestions of his imagination. The disease here is said to be in the imagination; that is, the patient’s mind is morbid or unsound when it imagines; healthy and sound when it remembers. Nay, he may be of unsound mind when his imagination is employed on some subjects, in making some combinations, and sound when making others, or making one single kind of combination. Thus he may not believe all his fancies to be realities, but only some or one. Of such a person we usually predicate that he is of unsound mind only upon certain points. I have qualified the proposition thus on purpose; because if the being or essence which we term the mind is unsound on one subject, provided that unsoundness is at all times existing on that subject, it is quite erroneous to suppose such a mind really sound on other subjects. It is only sound in appearance; for if the subject of the delusion be presented to it, the unsoundness which is manifested by believing in the suggestions of fancy, as if they were realities, would break out; consequently, it is absurd to speak of this as a really sound mind (a mind sound when the subject of the delusion is not presented), as it would be to say that a person had not the gout, because, his attention being diverted from the pain by some more powerful sensation by which the person was affected, he, for the moment, was unconscious of his visitation. It follows, from hence, that no confidence can be placed in the acts, or in any act, of a diseased mind, however apparently rational that act may be, appear to be, or may in reality be. The act in question may be exactly such as a person without mental infirmity might well do. But there is this difference between the two cases: the person uniformly and always of sound mind could not, at the moment of the act done, be the prey of morbid delusion, whatever subject was presented to his mind; whereas, the person called partially insane,—that is to say, sometimes appearing to be of sound, and sometimes of unsound mind, would inevitably show his subjection to the disease

the instant the topic was suggested. Therefore, we can, with perfect confidence, rely on the act done by the former, because we are sure that no lurking insanity, no particular, or partial, or occasional delusion does mingle itself with the person's act, and materially affect it. But we never can rely on the act, however rational in appearance, done by the latter, because we have no security that the lurking delusion, the real unsoundness does not mingle itself with, or occasion the act. We are wrong in speaking of partial unsoundness; we are less incorrect in speaking of occasional unsoundness: we should say that the unsoundness always exists, but it requires a reference to the peculiar topic, else it lurks and appears not. But the malady is there, and as the mind is one and the same, it is really diseased, while apparently sound; and really its acts, whatever appearance they may put on, are only the acts of a morbid or unsound mind. Unless this reasoning be well founded, we cannot account for the unanimity with which men have always agreed in regarding as the acts of an insane mind those acts, to all appearance rational, which a person does who labors under delusions of a plainly extravagant nature, though there is nothing in the act done, and nothing in the conduct of the party while doing it, at all connected with the morbid fancies. If these fancies only affect the party now and then; if for some months he is free from them,—laboring under them at other times, then his acts apparently rational would not be regarded as those of a person mentally diseased. But if we were convinced that at the time of doing the acts the delusion continued, and was only latent by reason of the mind not having been pointed to its subject, and would have instantly shown itself had that subject been presented, then the act is at once regarded as that of a madman. Thus there have been many cases of persons laboring under the delusion that they were other than themselves; have believed themselves deceased emperors or conquerors; others, supernatural beings. Suppose one, who believed himself the Emperor of *Germany*, and, on all other subjects, was apparently of sound mind, did any act requiring mind, memory, and understanding. Suppose he made his will, and either did not sign it (before signing was required), or, if he did, signed it with his own name; but suppose we were quite convinced that, had any one spoken on the German diet, or proceeded to abuse the German Emperor, the testator's delusion would at once break forth, then we must at once pronounce the will void, but as officious and as rational, in every respect, as any deposition of property could be; of course, no one could propound such a will with any hopes of probate, if it happened that while making it the delusion had broken out, even although the instrument bore no marks of its existence at the time of its concoction, it must always be a question of evidence, on the whole facts and circumstances of the case, whether or not the morbid delusion existed at the time of the *factum*; that is, whether, had the subject of it been presented, the chord been struck, there would have arisen the insane discord which is absent, to all outward appearance, from the chord not having been struck. The principles which have been laid down do not at all differ from those on which the courts have acted, which text writers have construed, and which scientific men, both moralists and physicians, have approved. In the well known case of *Dew v. Clark*,

reported 3 Addams, 97, but also reported, with the great advantage of the learned Judge's corrections, and published separately by Dr. Haggard, we find Sir *John Nicholl* stating that mere eccentricity is not enough to constitute mental unsoundness, nor great caprice, nor violence of temper, but that there must be an aberration of reason; and he adopts a definition of delusion given by the learned counsel in the cause (now a member of this court), deeming it well described by the expression that "it is a belief of facts which no rational person would have believed." Perhaps, in a strictly logical view, this definition is liable to one exception, or, at least, exposed to one criticism, namely: that it gives a consequence for a definition; and it may be more strictly accurate to term "delusion" the belief of things as realities which exist only in the imagination of the patient. The frame or state of mind which indicates his incapacity to struggle against such an erroneous belief, constitutes an unsound mind. Sir John Nicholl justly adds that such delusions are generally attended with eccentricities, often with violence, very often with exaggerated suspicions and jealousies."

\* \* \* \* "The existence of delusions being proved, and their continuance proved or assumed, at the date of the *factum*, so that the Court is satisfied of the testatrix then laboring under their influence, it is wholly immaterial that they do not appear in the will itself. The party propounding often approached this point in argument, and repeatedly adverted to the fact—perhaps we should say the assertion or assumption—that this will betrays no marks of the alleged delusions, or generally of an unsound mind. There was a manifest disposition to lay down a rule that no person laboring under monomania, or partial insanity, can be deemed intestable, unless the kind of insanity appears on the face of the will. But there was wanting the courage to lay down a proposition which would at once have been rejected, and must have been met with the question, Could any court admit to probate the will of the man who said (in the case cited by Sir *John Nicholl* in *Dew v. Clark*), 'I am the Christ,' although that will bore no marks whatever of an unsound mind, still less of the dreadful delusion under which the party labored?"

§ 18. It may therefore be considered as the present law of England, that a person partially insane is incompetent, so far as the making of wills or contracts is concerned, though as yet there has been no attempt to adopt the rule in this country. In fact its practical operation would be attended with many difficulties. It is true there are many cases, such as that just commented on, in which the particular monomania overshadows the entire intellect, or where it at least infringes upon the peculiar province of testamentary capacity. But it cannot be denied that in practice, cases of partial insanity or monomania frequently occur, in which there is an inflection of reason so definite and appreciable, as to make it impossible to exclude it from the general class of delusions, and yet which is found to be perfectly consistent with right reason, and with recognized business capacity in other respects. These cases will briefly be noticed.

§ 19. In the first place may be considered that common species of hallucination by which the mind, on being presented with a particular object, groups round it in a kind of reverie, the circumstances by which

it is ordinarily associated, and then assumes these circumstances as substantive existing facts. This is familiar to every one in the common process of a dream. "Thus," says Sir Walter Scott, "a dreamer hears a noise not sufficiently loud to awaken him entirely; at the same time something accidentally touches him. These impressions instantly form a part of his dreams, and adapt themselves to the tenor of the ideas that occupy his mind, whatever they may be. Nothing is more remarkable than the rapidity with which the imagination furnishes a complete explanation of this interruption to sleep, according to the manner in which ideas are presented by the dream, even without requiring a moment's respite for this operation. For example, if a duel is the subject of the dream, the noise that is really heard becomes the discharge of the pistols of the combatants. If an orator, in his dream, is making a speech, the noise becomes the plaudits of his supposed auditory. If the dreamer is transported in his dreams to the midst of ruins, the noise appears that of the fall of some portion of the walls. In a word, an explanatory system is adopted, in which the rapidity of thought is so great, that if we suppose the noise heard to be the first efforts of some one to awaken the sleeper, the explanation, although requiring a certain train of deductions, is usually finished and complete before a second effort has perfectly awakened the sleeper. There exists in the succession of ideas during sleep, an intuition so rapid, that it recalls the vision in which the prophet Mohammed saw all the wonders of heaven and hell, although the water contained in the jar, which was upset when his ecstasy commenced, was not completely emptied when he recovered the use of his ordinary faculties."

§ 20. The same process of association exists in many temperaments when the faculties are awake, and the hallucination becomes so blended with the reality as to become part of the texture of actual consciousness.

A vivid illustration of this—though in this instance the hallucination was fleeting while for the time entire—is cited from Wigan by de Bois-mont. (b) "I was in Paris," says the former, "at a soirée given by M. Bellart, some days before the execution of the Prince of Moskowa. The usher, having the name of M. Maréchal *ainé*, announced M. le Maréchal Ney. An electric shudder ran through the assembly, and, for my part I own that the resemblance to the prince was for a moment as perfect to my eyes as reality."

§ 21. An instance of hallucination, produced by association, of a much more permanent character, occurred to the present writer. Having occasion to receive a check as a dividend, for an amount which was readily remembered, as it was the same as had been received on the same day for several previous years, he deposited it, as he supposed, with the teller of the particular bank, which may be called bank A., where he kept an account. It so happened that at the opposite wing of the same building, with an entrance precisely similar, stood another bank, which may be called bank B. He went by mistake into the latter bank, and at once, supposing himself to be in the former, he invested it with the same drapery which it would have had if his supposition had been correct. Not having his bank-book with him, he presented the

(b) Rational History of Hallucination, 106.

check to the receiving teller, asking him to credit him with it as a deposit. It so happened that it had been his custom to hold a conversation in reference to a particular matter in which they had a common interest with the teller of bank A. When some weeks afterwards he discovered, on applying to bank A. for the entry in his own book of the deposit, that no such deposit had been noted by the teller, he turned back to the particular day when the check was received, of which the day and the amount was accurately planted on his memory, for the reasons already mentioned, and the actual fact of the deposit was brought to his recollection, grouped with the hallucination that it was bank A. that he had gone into—that it was the teller of bank A. whom he met—and that the particular inquiry so frequently before put to him in bank A. had been put to him then. The fact had been that on forming for himself an arbitrary and fictitious stand-point, he grouped around it the associations which would have attended the reality. So fixed, indeed, was his belief in the reality of the whole scene, that he would have testified to it under oath with as much positiveness as to any fact in his recollection. It was not until some time had expired that his mistake was discovered, and then only upon his accidentally being in bank B. and receiving an inquiry from the teller whether he meant to follow up the isolated deposit he had made on the particular day.

§ 22. Dr. Johnson was confident that he heard his deceased mother's voice crying "Samuel;" nor was this hallucination ever corrected; and yet no one would maintain that he was incapable of making a will.

§ 23. Lord Castlereagh, a short time before his very solemn death, and under every sanction which could exclude jesting, gave a narrative of a supposed apparition, in which he firmly believed, and which exercised a material influence on his life. When in the Irish Parliament, he went to visit a friend at a castle in the north of Ireland. Shown into a dark and venerable chamber, where there existed every material which would excite a superstitious imagination, having dismissed his valet, he went to bed. Hardly, however, was his candle extinguished when he became aware of a glimmer of light in his room. No fire had been lighted—the curtains were closed—and no explanation affording itself of this phenomenon, he rose from the bed, when, to his surprise, on turning to the point whence the light proceeded, he perceived the figure of a young and beautiful child, with a halo encircling its brow. With perfect confidence in the reality of the object, but believing it had been got up artificially as a joke, he followed it until it nestled in the arch of the great chimney, and at last sunk beneath the fireboard. The next morning he sought in vain for a clue by which the mystery could be dispelled. It was a subject which his host evidently shunned. On putting the question pointedly, however, Lord Castlereagh was informed that it was true that such a spectre as that had been reported in former times to have appeared under the title of the "Radiant Child." Once again the phantom appeared to the same noble and capable statesman—but no longer, it is said, with a radiant crown. This last appearance was not long before his own self-destruction, and yet, if the exterior alone was considered, when he was at the height of his power and glory. Certainly the spectre can now be easily explained, because a man who is weak enough to commit suicide, is not too strong to be haunted in a dream by an ap-

parition of whose traditional reputation he had undoubtedly heard, though the recollection afterwards escaped him. And yet we have here a case of an hallucination so entire as to produce partial insanity on that point, and perhaps to have been a motive power in his own suicide. Still it would hardly have been maintained that Lord Castlereagh, than whom no man of his day exhibited, when in public life, greater coolness or business clearness, was ineapable, because of this single delusion, of making a contract or will.

§ 24. It is immaterial, so far as the principle is concerned, whether the hallucination be the result of a morbid imagination, as was the case with Lord Castlereagh, or of imposition on the part of others. In either case, if the hallucination be groundless and absurd, the seizing upon it by the mind as an item of faith, equally constitutes partial insanity.

§ 25. A butcher in full health, many years ago, as was related by an eminent physician of Philadelphia, was on his way to the city, when he was met by a party of medical students, who determined to see what would be the effect on him of an attempt to persuade him that he was affected with the premonitory symptoms of a fever then prevalent. At different points, one by one, they accosted him with inquiries as to what was the cause of his paleness, of the livid state of his skin, &c., and as to whether he was aware that marks of the epidemic were on him, &c. At first he sturdily repelled the supposition, but gradually became frightened, and at last returned home to be attacked by the very disease which had been attributed to him. Hearing that their experiment had been carried too far, his tormentors set to work in earnest to undeceive him; but it was too late. "You are joking now; or you are trying to cure a dying man by a trick," was his reply. "You were right at first; you cannot deceive me now by telling me it was a hoax."

It was the firm belief of Lord Herbert, of Cherbury, that a divine vision had indicated to him the correctness of a particular course of religious speculation which, on the faith of the supposed vision, he published, and which he made the basis of his future action. The second Lord Lyttleton was equally persuaded that a divine warning had admonished him of his approaching death. And no less confident, though less serious in its consequences, was the conviction of Philip, second Earl of Chesterfield, of the reality of a similar preternatural interference. One night, in the year 1652, he saw something white, like a spread sheet, at the head of his bed. He tried to seize it, but it slid away, and disappeared. His thoughts immediately turning to his wife, who was at Networth, with her father, he hurried there, but was met by a servant, with a letter from his wife, which informed him that precisely the same apparition had appeared to her, and had been the cause of the journey of the messenger whom she had dispatched to inquire as to his health.

§ 26. Abercrombie gives an illustration of habitual hallucination which at the same time was consistent with reason. The patient, when he met a person in the street, was uncertain whether the latter was a real person or a phantom, though with close observation he was able to detect the dissimilarity. The features of the real person would be more decided and more complete than those of the phantom; but the power of discrimination by this process was too uncertain to be relied on, and

the only test of which the patient felt certain was that of the voice, footstep, or touch. The phantom had none of these; the substance, of course, had all. He had the faculty of recalling his visions at will, by powerfully fixing his attention on the conceptions of his mind, but while the hallucination could be invoked at will, it could not be arbitrarily dispelled. That it *was* a hallucination, he was perfectly convinced; and that it was entirely consistent with general reason was demonstrated by his clearness of head and business capacity.

§ 27. A recent case in this country illustrates the same position with remarkable point. A merchant who had for years managed with shrewdness and success an extensive business, became thoroughly imbued with the spirit rapping and spirit conversing hallucination. Though he conducted his business as well as those who were not thus afflicted, his family conceived that this and cognate eccentricities made him a fit subject for a commission of lunacy. This he soon discovered, and laid his plans accordingly. He had theretofore done a cash business, and his punctuality and accuracy had won him extensive credit. He immediately proceeded to buy a large stock of goods from a number of the most sagacious business men within his reach, and gave long notes in exchange. "I do not know how it strikes you," was the way he broached the matter to his family, "but whatever may have been your chances once, they are but light now. All I have to do is to subpoena my friends to whom I have just given my notes, and you may depend upon it, they will not only testify strongly as to their opinion of my sanity, but will bring that opinion down to this particular hour."

§ 28. If the principle announced by Lord Brougham be correct, in no one of the preceding cases could the party affected be considered as possessed of testamentary capacity, or the capacity to contract. "Insane on one point, insane on all," would certainly disfranchise multitudes who are now considered practically competent to discharge all the business relations of life. Of such a doctrine it is difficult to estimate the perilous consequences. A party who cannot be compelled, on the ground of lunacy, to complete his own contract, cannot compel others to complete theirs, and the practical operations of society would be therefore seriously deranged.

§ 29. The cases which have just been noticed, comprise chiefly those in which, while the hallucination is positive, the practical inflection of conduct produced thereby is slight. This, however, cannot be said to be the case with those instances in which a supposed supernatural vision or monitor is received as a guide on the most momentous actions of life. Napoleon declared on many critical occasions that he was conscious of the preternatural vision of a star, which sometimes even appeared in his own cabinet, by which he allowed himself to be guided. Bernadotte, beyond doubt, on one important movement at least, was swerved from his course by the vision of an old woman. Constantine felt or feigned a similar impressibility. These cases, it is true, may be suspected, but suspicion cannot be thus cast on the multitudes of brave men who were driven in border or highland contests from the battle field by a threatening wraith, or who were encouraged to the wildest sacrifices by the beckoning of an imaginary finger or the invocations of a preternatural voice.



§ 30. There are, however, other cases in which there is a general morbid derangement of all, or of a material portion of the organs. To these, as well as to the great mass of instances where hallucination forms the ground work, the observations of de Boismont, on the case of a man who supposed that he had sank all his wealth at the bottom of a well, apply with great force. "It may be asked whether, in the state of mind in which the patient was, whose history we have related, he was capable of making a will. This is a very difficult question; but its solution is not an impossibility. When the conduct of the individual does not depart from received usages, when it is not controlled by one of those false ideas that make him hate his relations and friends without any motive, and when he regulates his expenses prudently, we do not think that whimsical actions, or words, the results of an erroneous belief, but having no influence on the prominent acts of his life, should deprive a person of his civil liberties, and of the power of making his will."

§ 31. Nor should it be forgotten that the effects of such incapacitation would be most cruel to the sufferer himself. Society is prone enough to make eccentricities and weaknesses the subject of contempt, ridicule or insult. The courts should be cautious how, by taking away the power to ensure respect, they thus increase the misfortune of a class into which no man can assure himself he may not fall—which includes almost the whole of those whose lot it is to reach extreme old age—and which already carries a burden sufficiently heavy. If such persons cannot reward by their bounty those by whom they are treated with tenderness, and by whose means their comfort is guarded, they will lose, in most instances, the only means remaining to them of self preservation. The law which thus deprives them of their own means of self support, should tender them in return a refuge by which, by public sanction, they could exact that attention which their own influence no longer enables them to secure. This, however, is certainly not done now, nor could it be done on any intelligible basis, without consigning a large proportion of the most efficient members of society to an asylum. As society at present stands, the only remedy seems to be to throw the same tender guardianship around the feeble minded and the eccentric, as in a passage already cited has been so touchingly invoked by Chancellor Kent for the old.

§ 32. In this country, as has already been seen, the law continues to be, that a vein of partial insanity does not affect testamentary capacity, except where it enters into the texture of the will. This has been expressly held to be the case with regard to mere eccentricities, no matter how extravagant, such as a belief in witches, or in the loss of health from the application of slow poison surreptitiously administered.<sup>(c)</sup> When they enter into the subject matter of the will, however, it of course falls.<sup>(d)</sup> And a will, otherwise capable of being sustained, was upheld, notwithstanding it appeared that the testator believed in reference to a future state of existence that there were degrees of happiness therein correspondent to and sympathizing with

(c) *Leech v. Leech*, 11 Penns. Law J., 177; *Lee v. Lee*, 4 M'Cord, 183.

(d) *Johnson v. Moore*, 1 Litt. 371.

the circles of society on earth,—that as a man stood in the latter, so he stood in the former,—and that there his position would be very much determined by the amount of property which he had acquired here.<sup>(e)</sup>

### 3d. *Lucid Intervals.*(*ee*)

§ 33. Of course, a person who is actually at the time a lunatic, cannot bind himself civilly, and so far as this, there is no ground for discussion. When a party is once proved to have been at the time insane, all question is at an end. The difficulty, however, is to the fact of *time*. Unless what in the courts has been called *habitual* insanity be shown, *i. e.*, such insanity as is, in its nature, continuous and chronic, the fact of the existence of a prior period of lunacy does not suffice even to throw the burden of proof on the party setting up competency. The case, however, is otherwise when such habitual insanity is shown to have existed; in which case the presumption is that the party was insane at the time, and the burthen is on those seeking to prove the contrary.<sup>(f)</sup> “If you can establish,” says Sir Wm. Wynne, as cited by Mr. Jarman,<sup>(g)</sup> “that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act; that being proved, is sufficient, and the general habitual insanity will not affect it; but the effect of it is this: it inverts the order of proof and presumption; for, until proof of habitual insanity, the presumption is, the party agent, like all human creatures, was rational; but when an habitual insanity in the mind of the person who does the act is established, then the party who would take advantage of the fact of an interval of reason must prove it.” And in a recent Massachusetts case, Dewey, J., said, “Neither observation nor experience shows us that persons who are insane from the effect of some violent disease, do not usually recover the right use of their mental faculties. Such cases are not unusual, and the return of a sound mind may be anticipated from the subsiding or removal of the disease which has prostrated their minds. It is not, therefore, to be stated as an unqualified maxim of the law, ‘once insane, presumed to be always insane;’ but reference must be had to the peculiar circumstances connected with the insanity of an individual, in deciding upon its effects upon the burthen of proof, or how far it may authorize the jury to infer that the same condition or state of mind attaches to the individual at a later period. There must be kept in view the distinction between the inferences to be drawn from proof of an habitual or apparently confirmed insanity, and that which may be only temporary.”<sup>(h)</sup>

§ 34. In case of idiocy, a slightly different rule seems laid down. Thus, in a late case, the evidence showed that the deceased was, in 1815, placed in confinement as a lunatic, and there remained till 1817,

(*e*) *Gass v. Gass*, 3 Humph. 278.

(*ee*) See for the psychological view of this question, *post*, § 254.

(*f*) *Hoge v. Fisher*, 1 P. C. C. R. 163; *Whitenaek v. Stryker*, 1 Green, C. R. 8; *Harrison v. Rowan*, 3 W. C. C. R. 580; *Gable v. Grant*, 2 Green, C. R. 629; *Stevens v. Vandervele*, 4 Wash. C. C. R. 262; *Jackson v. Vandusen*, 5 Johns. 144; *Kelly v. Webster*, 8 Shep. 46; 1 Jarm. on Wills, (2d Am. ed.) 65.

(*g*) 1 Jarm. on Wills, (2d Am. ed.) 65.

(*h*) *Hix v. Whittemore*, 4 Metc. 545.

when he was released. In 1820, about which time he was proved to have committed certain rational acts of business, *(hh)* he made a rational will. In 1822 he was again placed in confinement, and so remained till his death, in 1849. In 1833 he was found, on a commission, to have been of unsound mind, without lucid intervals, since 1815. The will was sustained on the ground that though it is otherwise with regard to lunacy, yet when *idioty* is set up, it is disproved by contemporaneous intelligent acts of business. *(i)*

§ 35. Where no extraneous influence is shown to have been exerted, the character of the act itself, as has already been noticed, goes far to determine the capacity of the party at the particular time. In a very late case *(j)* Dr. Lushington said, "In the opinion of a very great judge, Sir William Wynne, in the celebrated case of *Cartwright v. Cartwright*, he said where a rational act was done in a rational manner, such was the strongest and best proof which could arise even as to a lucid interval. Now, I cannot say that I subscribe altogether to this observation of Sir William Wynne, for I do not, but it is entitled to great weight; and, to a certain extent, a rational act done in a rational manner, though not, I think, the strongest and best proof of a lucid interval, does contribute to the establishment of a lucid interval."

#### 4th. *Intoxication.*

§ 36. As has been already incidentally observed, intoxication, when at the time prevailing, renders a party incompetent to make a contract or execute a will. It is true that most of the cases go on the ground of express or implied fraud, so far as acts *inter vivos* are concerned; for it is certainly only a little less culpable to enforce a bargain made with a drunken man than it is to make him drunk on purpose to secure it. *(k)* But the general position is well expressed by Pothier: *(l)* "Drunkenness," he says, "when it goes so far as absolutely to destroy the reason, renders a person, so long as it continues, incapable of contracting, since it renders him incapable of consent." *(m)* So rigorously has this doctrine been applied, that it was even held that drunkenness is a good defence by an endorser of a note against an innocent and bona fide holder; *(n)* though when a man is sober enough to write his own name correctly, it will require strong evidence of stupefaction or delirium to induce a jury to sustain his irresponsibility against an innocent third party. But drunkenness, though it is a shield, cannot be made an offensive weapon; and the law will not permit a man to use his drunkenness as a means of cheating others. Thus, a man who after buying goods when drunk retained them when sober, was held responsible for the price. *(o)*

§ 37. The distinction in this respect is thus stated by Vice-Chancellor Stuart: "The principles acted upon in *Cook v. Clayworth* were

*(hh)* See *ante*. § 7.

*(i)* *Bannantyne v. Bannantyne*, 16 Jur. 864, 14 English R. 581.

*(j)* *Ibid.*

*(k)* *Parke, B., Gore v. Gibson*, 13 M. & W. 626; 2 Greenleaf on Ev. § 170; *Pitt v. Smith*, 3 Campb. 33; *Fenton v. Halloway*, 13 Stark, 126.

*(l)* *Obligations*, N. 49.

*(m)* See also *Chitty on Contracts*, 112; *Story on Contracts*, 27.

*(n)* *Sentance v. Poole*, 3 C. & P. 1.

*(o)* *Alderson, B., Gore v. Gibson, ut supra.*

that a party being in liquor when he entered into an agreement, was no reason for the Court to refuse a decree for specific performance, and they pointed out the rule to be acted on in these cases. In *Cory v. Cory*, and, subsequently, in *Nagle v. Baylor*, the same rule had been acted upon. The course of the Court had been, in cases of this kind, that it would not assist a person who had obtained or wished to get rid of an agreement or deed on the mere ground of intoxication; but only where any contrivance was used to draw him in to drink, or any unfair advantage taken of his situation, or in that extreme state of intoxication which deprived a man of his reason, did the Court interfere. The Court was disinclined to interfere in such cases; and if a bill were filed to enforce an agreement and it appeared that no fraud had been used, the duty of the Court was to dismiss the bill.”(p)

§ 38. In actions, however, for *torts* (*i. e.* cases where the gist is personal injury), drunkenness is no defence to the merits. Thus, if a man is sued for injury to my property or person, it is no defence that he was drunk at the time, for the policy of the law is both to redress such wrongs and to discountenance intoxication.(q) And the plaintiff may even introduce the fact of drunkenness as an aggravating item, when the question is whether proper care was used in avoiding an accident. Thus, in a suit for injury to the plaintiff by running a sleigh against him, a very eminent American Judge, Gibson, C. J., said “the evidence of intoxication ought to have been received, not because the legal consequences of a drunken man’s acts are different from those of a sober man’s acts, but because, where the evidence of negligence is nearly balanced, the fact of drunkenness might turn the scale, inasmuch as a man partially bereft of his faculties would be less observant than if he were sober, and less regardful of the safety of others. For this purpose, but certainly not to inflate the damages, the evidence ought to have been admitted.”(r)

§ 39. Drunkenness to such an extent as to render a party unconscious of what he is engaged in, or drunkenness even to a slight degree, when its effect is to render a party subject to the influence of others, avoids a will;(s) though the mere fact of the testator being at the time under the influence of liquor, will not suffice, unless consequent disability be proved.(t) Long continued prior habits of intoxication also, will not, of themselves, afford a presumption of incapacity, unless the testator was proved to have been drunk at the time.(u) The reason of this distinction between drunkenness and insanity is well pointed out by Sir John Nicholl. Insanity, he argued, may often be *latent*, whereas there can scarcely be such a thing as latent ebriety; and, consequently, all that is required to be shown, in ordinary cases, is the absence of excitement at the time of the act done; at least, the absence of excitement in any such degree as would vitiate the act done; “for,” he said, “I suppose it will be readily conceded that, under a mere slight degree

(p) *Stuart, V. C., Shaw v. Thackeray*, 23 Eng. Reports, 21.

(q) *Ray. Med. Jur.* 292; *Co. Lit.* 247(a); 4 *Rep.* 124 (b); 4 *Bl. Com.* 25.

(r) *Wynn v. Allard*, 5 *W. & S.* 525.

(s) *Shelford on Lunacy*, 274, 304.

(t) *Shelford on Lunacy*, 276; *Starret v. Douglass*, 2 *Yeates*, 48; *Andress v. Weller*, 2 *Green, C. R.*, 604; *Gardner v. Gardner*, 21 *Wend.* 526.

(u) *Ibid.* *Black v. Ellis*, 3 *Hill, S. C.* 68; *Ayrey v. Hill*, 2 *Addams*, 206; *Shelford on Lunacy*, 276.

of that excitement, the memory and the understanding may be, in substance, as correct as in the total absence of any exciting cause. Whether, where the excitement in some degree is proved to have actually subsisted at the time of the act done, it did or did not subsist in the requisite degree to vitiate the act done, must depend, in each case, upon a *due* consideration of all the circumstances of that case in particular; it belonging to a description of cases that admits of no more definite rule, applicable to the determination of them, than the one I have suggested, that I am aware of.”(v) Where the will was executed under the influence of drink intentionally and fraudulently administered, of course it falls, by the operation of a rule already noticed with regard to contracts; but where such is not the case, actual derangement of the reasoning faculties, arising by undue excitement, must be shown.(w) Certainly the effect would be most deleterious if the mere existence of excitement produced by stimulants was held to vitiate any act performed during its continuance.

## II. WHAT IS NECESSARY TO BE PROVED IN ORDER TO DEPRIVE A PARTY OF THE MANAGEMENT OF HIS ESTATE.

§ 40. In most of the United States, as in England, process exists by which, when a party is incapable of the management of his estate, whether from mental unsoundness or from habitual drunkenness, a committee may be appointed, to whom the custody of his property is committed. It would be out of place to set forth here the statutes by which this process is defined and settled; it is enough now to notice the general scheme of practice which exists in England, and which has been with the exceptions of only slight alterations of detail, adopted in this country.

§ 41. When there is reason to believe that a party, from unsoundness of mind or habitual drunkenness is incapable of managing his affairs, a petition lies, generally from any person interested in his person or estate, for the issuing of a commission. Upon the reception of the petition, the court directs a commission to issue to one or more persons—generally required to be learned in the law—directing the inquiry by commissioner and jury, as to the facts of the petition. The commissioner being thus authorized, directs a precept to the sheriff, commanding him to summon a jury, who, when they meet, hear testimony,—on both sides if desired—on the matter submitted to them, and after being charged by the commissioner as to the law of the case, return a finding as to whether, from the lunacy or habitual drunkenness complained of, the respondent is incapable of managing his estate. Should the finding be in the affirmative, the court will appoint a committee who will take charge of the respondent’s estate,(x) subject however to the absolute right(y) of the respondent to traverse the finding,—i. e., to put in a formal denial of it, in which case the question is determined

(v) 1 Jarman on Wills, (2d ed.,) 54.

(w) Wheeler v. Alderson, 3 Hagg. 602; 1 Jarman on Wills, (2d ed.,) 54-5.

(x) See as to the practice in regard to the appointment and removal of committees, Black’s Est. 6 Harris, 434; Hulings v. Laird, 9 Harris, 268.

(y) Cumming in Re. 11 Eng. Law & Eq. 202.

before a court and jury, in the same way with any contested fact. Whether the alleged lunatic really is capable of volition as to a traverse, and desires that a traverse should be entered, will be determined, it seems, by the chancellor himself by personal examination or otherwise.<sup>(z)</sup>

§ 42. It will be seen that the point at issue under a commission of lunacy or habitual drunkenness, is the *general*, and not the *partial* or *particular* incompetency of the party who is the subject of the inquiry. It is a matter of some moment also, that the fullest opportunity of examination be given. When a particular instrument is sought to be vacated, or a particular crime to be excused, the testimony of the medical witness is necessarily drawn from but casual observation, made in most cases at a time when he had no reason to suspect the existence of the disease. Great incentives to fraud also exist, and it is well known how acute must be the penetration, and how sharp the tests which are not sometimes baffled by the simulation of mental unsoundness. On the other hand, a commission of lunacy is executed with deliberation, after a calm and full review of the previous life of the party under consideration. Nor is he likely himself to aid the inquiry by any undue sympathy, for his interests and his pride are both enlisted in resisting his moral and intellectual disfranchisement. It becomes, therefore, a simple test, Is the respondent prevented by mental unsoundness or habitual drunkenness from managing his own estate? If not, no matter how responsible he may be for crime, or capable at particular times of making a bargain, the finding must be against him. Upon a recovery of competency, the commission, on due cause shown, will be superseded.<sup>(a)</sup>

§ 43. "In commissions of lunacy," says Dr. Winslow, "the witness must not only be prepared to give an opinion as to the then state of mind of the party, and competency to take care of his person and manage his affairs, but he must be prepared occasionally to pronounce judgment as to a prior questionable condition of brain and mind. The alleged lunatic may, under the exercise of undue influence, have previously alienated his property by will, or been induced to execute other important documents. The witness will be called upon to depose as to the probable state of the brain at the time, and as to the length of the alleged existing attack of insanity. Well-marked symptoms of organic cerebral disease may be present, and it will in some cases be an important point to decide, whether such a condition of physical ill-health has not been of some years' duration, impairing the mental vigor, destroying all power of rational conduct and healthy continuity of thought, and thus interfering with a right exercise of the judgment and affections in the legitimate disposal of property."<sup>(b)</sup>

In a case which attracted much popular attention at the time,<sup>(c)</sup> Chief Baron Pollock declared, that "no person ought to be confined in

<sup>(z)</sup> Cumming in re. 11 Eng. Law & Eq. 202.

<sup>(a)</sup> See Lackey v. Lackey, 2 B. Monr. 478; Matter of Russell, 1 Barbour C. R. 38; Matter of Barbour, 2 ib. 97; Matter of Mason, 1 ib. 436; John Beaumont's case, 1 Whar-ton R. 52.

<sup>(b)</sup> Winslow on Medico Legal Evidence in cases of Insanity, 129, 130.

<sup>(c)</sup> Nottridge v. Ripley, before Chief Baron Pollock, sitting at Nisi Prius, June, 1849, reported in full in Journ. of Pscy. Med. vol. 2, p. 630.

a lunatic asylum unless dangerous to himself and others." This *dictum*, which certainly is inconsistent with the necessities of medical practice, has been combated and exploded with great ability by very eminent psychological authority,<sup>(d)</sup> and has not been followed by the current of American judicial opinion. There are necessarily cases when the safety of property and the health of the patient himself, require confinement in an asylum, though there be no danger of violence to himself and others, and it is not likely that the existence of such cases will be again judicially questioned. Whether the confinement, in any particular case, was proper or not, will be for the court and jury, if an action of false imprisonment be brought, to determine specially. And the law in such a case undoubtedly is, that confinement is justifiable, if either the safety of the patient or others require it, or it is necessary for his restoration to health.<sup>(e)</sup>

§ 44. In respect to *drunkenness* the law is, that while occasional acts of intoxication will not justify a finding of "habitual" drunkenness, yet on the other hand, it is not necessary for such a finding that the party should be constantly in an intoxicated state. Thus recently in Pennsylvania, Knox, P. J., in putting the case upon a traverse to the jury, said, "Neither was it necessary to make out the case that a person should be constantly in an intoxicated state, that a man might be an habitual drunkard, and yet be sober at times for days and weeks together. That the question was, had the traverser a fixed habit of drunkenness? Was he habituated to intoxication whenever the opportunity offered? The question is one of fact for the jury to find, but the court has no hesitation in saying, that the man who is intoxicated or drunk the one half of his time, should be pronounced an habitual drunkard." And in the Supreme Court, Rogers, J., said, "To constitute an habitual drunkard, it is not necessary that a man should be always drunk. It is impossible to lay down any fixed rule as to when a man shall be deemed an habitual drunkard. It must depend upon the decision of the jury under the direction of the court. It may, however, be safely said, that to bring a man within the meaning of the act, it is not necessary that he should always be drunk. Occasional acts of drunkenness, as the Judge says, do not make one an habitual drunkard. Nor is it necessary he should be continually in an intoxicated state. A man may be an habitual drunkard, and yet be sober for days and weeks together. The only rule is, has he a fixed habit for drunkenness? Was he habituated to intemperance whenever the opportunity offered? We agree that a man who is intoxicated or drunk one half his time is an habitual drunkard, and should be pronounced such. We also concur with the court, that if the jury found the traverser to have been at the date of the inquisition an habitual drunkard, it was necessary to decide whether he was capable or incapable of managing his estate. His incapacity in that event is a conclusion of law. It is not

<sup>(d)</sup> See a remonstrance with the Lord Chief Baron, touching the case of *Nottridge v. Ripley*, by John Conolly, M. D., 1849. A letter to the Lord Chancellor on the defect of the law regulating the custody of lunatics, by Charles Curten Cooper, London, 1849. *Psychological Review*, vol. 2, p. 564; *ib. vol. 3*, p. 14. A letter to the Right Hon. Lord Ashley, M. P., relative to the case of *Nottridge v. Ripley*, Dundee, 1849.

<sup>(e)</sup> *Hinchman v. Ritchie*, Brightly R. 143.

necessary to say, it is a *presumptio juris et de jure*; but, at least, it throws the burden of proof of capacity on the traversers. Indeed, it may be well doubted, whether his management or mismanagement of his estate is a matter of inquiry. It is very certain, under the act of the 13th of June, 1836, proceedings may be instituted against an habitual drunkard who has no estate. But this cannot be if the mismanagement of it be necessary. It is well said, that there must be an evidence of squandering property, to support a proceeding to declare an individual an habitual drunkard, else the object of the act in many cases would be defeated. For it is precautionary in its design, and hence a disposition of mind or body which might lead to the wasting of an estate, is sufficient to justify the enforcement of its provisions.(f) It is indeed impossible that a man can be an habitual drunkard without waste or mismanagement, as the very act of drunkenness is itself waste. In this case, even if required, the evidence was full and plenary to this point.”(g)

### III. WHAT DEGREE OF UNSOUNDNESS AVOIDS RESPONSIBILITY FOR CRIME.

§ 45. The difficulties that have attended the discussion of this branch of the law of lunacy, have arisen from an attempt to reduce into an inflexible code, opinions which while relatively true in their particular connection, were not meant for general application. Thus, for instance, when a defendant in whom there is no pretence for mania or homicidal insanity, claims to be exempt from punishment on the ground of incapacity to distinguish right from wrong, the Court very properly tells the jury that the question for them to determine is, whether he labors under such incapacity or not. The error has been to seize such an expression as this as an arbitrary elementary dogma, and to insist on its application to all other cases. Or, take the converse, and suppose the defence is merely homicidal insanity. In such a case it would be very proper to tell the jury that, unless they believe the homicidal impulse to have been uncontrollable, they must convict. And yet nothing would be more unjust than to make this proposition, true in itself, a general rule to bear on such cases as idiocy. It is proposed to avoid this difficulty by treating this question practically, in the only way in which it can arise in the courts, and to consider briefly, not what is the general limit of moral responsibility in the abstract, but in what cases such responsibility ceases to exist.(h) These will be considered as follows :

1. Where the defendant is incapable of distinguishing right from wrong in reference to the particular case.

(f) *Sill v. McNight*, 7 W. & Ser. 245.

(g) *Ludwick v. Com.* 6 Harris, 173.

(h) The difficulty in this respect has been increased by the looseness with which legal adjudications are cited by even some of the more eminent text-writers. In fact, while the exigencies of counsel and the duty of judges require a constant recourse to the text books on this particular science, in making up such text books, the authorized law reports have not been sufficiently relied upon. Dr. Beek, it is true, in his valuable treatise, has spread on his pages reports of several of the older cases, and the same line of authorities has been more cursorily reviewed by others. And even in the very recent edition of Dr. Ray's work on this particular subject—"The Medical Jurisprudence of Insanity"—a work as remarkable for precision of expression and elegance of style as for general judicious-



2. Where he is acting under an insane delusion as to facts which, if true, would have relieved the act from responsibility, or when, in

ness and accuracy—it is declared that “judging from the few cases that have been reported, the course of practice in the English criminal courts has been in strict conformity with the principles laid down by Hale.” The “principles laid down by Hale” are those which that humane judge and laborious text-writer—who prided himself in having never, on speculations of his own, advanced an opinion or pronounced a judgment—had drawn from the medical authorities of that day. These principles have since then been greatly modified both by legal and medical writers; and it is to be regretted that either class, in reviewing the matter, should confine themselves to the earlier authorities, and then declare that the old law continues unaltered, “judging from the few cases that have been reported.” The fact is that both in this country and in England the cases “reported” on the subject are not “few” but numerous; and if they had been examined in detail, it would have been found that they kept pace with almost equal step with the advance of medical science. How far the latter has kept pace with them may be estimated from the fact that Dr. Ray—the author of the fullest and most recent work on this vexed subject—has, even in his edition of 1853, cited scarcely a single volume of the thousands in which the authorized reports of the American Courts are published. It is true that several American cases are noticed, and delicate shades of opinion declared to have been settled by them, but they are cited from the “notes of counsel,” from “Niles’ Register,” from the “Dollar Newspaper,” and from “Zion’s Herald.” Were no authorized reports to be had, these references might be received, though even then with great allowances; but in two, at least, of the four cases mentioned, authorized reports, both in pamphlet and in aggregate form, have been for some years before the public. Of course, not even substantial exactness can be secured by the use of evidence not only so entirely secondary, but which at the time it was issued, was meant only for popular use.

Of the mistakes arising from looseness of citation in this respect, we may take as an illustration Wood’s case, which is relied upon with much complacency by Dr. Winslow, in his late Lectures on Insanity, (p. 102), to show that in America “a verdict of lunacy” will be recorded, under circumstances which really show nothing more than vehement passion and morbid excitement. In that case, which occurred in Philadelphia in 1838, a father shot his daughter in a paroxysm of rage, caused by her improvident marriage. The prosecution was abandoned by the Attorney-general, under circumstances which were not at all connected with the defendant’s sanity or insanity; and a verdict of acquittal was rendered—not of lunacy—in the teeth of a charge from the very able and humane judge—Judge King—who tried the case, that the defence of insanity had not been in any degree substantiated. The verdict is no authority whatever. It was produced by circumstances very derogatory to public justice—it was received with unbroken disapprobation by the entire community—and it was in direct opposition to the charge of the Court, instead of being responsive to it. Had the official report of the case been resorted to, the last fact, at least, would have been discovered.

Some degree of the severity of the censure with which the common law has been visited in this connection, will be abated by the accomplished gentlemen who have pronounced it, when they consider these facts. In fact, when the nature of the COMMON LAW—words oftener used than understood—is considered, a much modified view will be taken. The common law has been defined to be statutes worn out by time; it may more properly be treated as the precipitate of the wisdom of all ages—all professions—all countries. If a question is to be tried involving the most delicate point of mechanics, the testimony of experts is taken, and what they declare to be the law of philosophy, the judge declares to be the law of the land. If a question of marine right is to be determined, the mysterious laws of the sea are invoked—the “sweet influences of the Pleiades and the bands of Orion”—and as taught by science, they become part of the common law. And so on a trial where the question at issue was whether a certain species of fish was able to surmount obstructions by which a river in Maine had been dammed up by parties interested in the soil, it was held that the observations of scientific men, versed in this particular topic, were part of the common law of the land for the specific case; and that therefore naturalists, who had given attention to the habits of this fish under such circumstances, could be called to give their opinion on the merits. (*Cottrill v. Mason*, 3 Fairf. 222. See more fully as to cases in which the opinions of experts are evidence, post, § 94.) And the great works of the masters in all professions have become, also, part of the common law. Even by a judge of remarkable rigidity as a literal commentator on the older writers, this is freely admitted. “I consider the administrators of criminal law greatly indebted to them, (writers on medical jurisprudence, &c.,) for the results of their valuable experience, and professional discussions on the subject of insanity; and I believe that those judges who carefully study the medical writers, and pay the most respectful but discriminating attention to

connection with such insane delusion, his reasoning powers are so depraved as to make the commission of the particular act a natural result of the delusion.

3. When he is impelled by a morbid and uncontrollable impulse to commit the particular act.

After which will be considered,

4. The relations of drunkenness to responsibility for crime.

When other cases arise in which a sober and enlightened medical observation declares that there is no real moral responsibility in the patient, the same opinion will be adopted by the courts upon trial.

At present the reported cases may be classed under the preceding heads, to which attention is now invited.

1st. *When the defendant is incapable of distinguishing right from wrong in reference to the particular act.*

§ 46. Under this head may be enumerated persons afflicted with idiocy or amentia, or with general mania. It is certain that wherever such incapacity is shown to exist, the Court will direct an acquittal; or if a jury should convict in the teeth of such instructions, the Court will set the verdict aside. The authorities to this effect are so numerous, that a general reference to them is all that is here necessary, it being observed at the same time, that while the earlier cases lean to the position that such deprivation of understanding must be general, it is now conceded that it is enough, if it is shown to have existed in reference to the particular act.<sup>(i)</sup>

To precisely this effect is the answer of the fifteen judges to the ques-

their scientific researches on the subject, will seldom if ever submit a case to a jury in such a way as to hazard the conviction of a deranged man." (Hornblower, C. J., 1 Zabriskie, 196.) So that when in any particular instance, ignorance may be exhibited or injustice done, it must be attributed, not to a want of flexibility in the system, but to an imperfect dissemination of truth by those who have assumed its guardianship.

Newspaper and other unofficial reports, in fact, however interesting, are of no legal authority, and they should be to a peculiar degree received with the same qualifications which have been noticed as required by all *nisi prius* charges. What a judge tells a jury is meant for a particular issue. If the evidence should show an old grudge, his duty would undoubtedly be, to say to the jury, that drunkenness must be left entirely out of consideration. If the defendant and the deceased were mere strangers, and the defendant in sudden passion, from what, to a man in his state of mind, would be adequate provocation, killed the deceased, it would be proper to tell the jury that drunkenness in this case would lower the case to manslaughter. It is plain, however, that expressions directed to a particular state of facts, cannot properly be severed from the context, and propounded as absolute independent principles applicable to all cases whatever. It is only by carefully marshaling the facts, that we learn what the opinions of the judge trying the case really was, and even then the position of the Court, the opportunities it has possessed for revision and a consultation of authorities after argument, and the authenticity and accuracy of the report, enter largely into the question how far the opinion so expressed is of weight.

(i) 1 Inst. 247; Bac. Abr. Idiot. Co. Litt. 247, (a); 1 Russ. on Cr. by Greaves, 13; 1 Hawk. cl. s. 3; 4 Bla. Com. 24; Collinson on Lunacy, 573, 673, (n.); R. v. Oxford, 9 C. & P. 533; Burrow's Case, 1 Lewin, 238; R. v. Goode, 7 Ad. & El. 536; 67 Hans. Par. Deb. 728; Bowler's Case, Hadfield's Case, Ibid. 480; 1 Russ. 11; 27 How. St. Tr. 1316; Com. v. Rogers, 7 Metc. 500; 7 Bost. Law Rep. 449; Com. v. Mosler, 4 Barr, 267; Freeman v. People, 4 Denio, 10; State v. Spencer, 1 Zabriskie, 196; State v. Gardiner, Wright's Ohio R. 392; Com. v. Farkin, 3 Penn. L. J. 482; Vance v. Com. 2 Virg. C. 132; McAllister v. State, 17 Alab. 434; R. v. Barton, 3 Cox C. C. 275; R. v. Offord, 5 C. & P. 168; R. v. Higginson, 1 C. & K. 129; R. v. Stokes, 3 C. & K. 185; R. v. Layton, 4 Cox, C. C. 149; R. v. Vaughan, 1 Cox, C. C. 80.

tions propounded to them by the House of Lords in June, 1843—answers which were extra-judicially delivered, and which, therefore, though of weight as *opinions*, are not binding as *authority*. “The jury,” they said, “ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.”(j)

2d. *When the defendant is acting under an insane delusion as to circumstances, which, if true, would relieve the act from responsibility, or where his reasoning powers are so depraved as to make the commission of the particular act the natural consequence of the delusion.*

§ 47. The answer of the English judges on this point is worthy of notice. The question propounded to them in this respect, was, “If a person, under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?” “To which question,” they replied, “the answer must of course depend on the nature of the delusion: but, making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion exists, were real. For example; if under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.”

§ 48. So far as the law thus stated goes,—and it is stated with extreme caution,—it has been always recognized as binding in this country. Even where there is no pretence of insanity, it has been held in one State, that if a man, though in no danger of serious bodily harm, through fear, alarm, or cowardice, kill another under the impression that great bodily injury is about to be inflicted on him, it is neither manslaughter nor murder, but self defence;(k) and though this proposition is too broadly stated, as is remarked by Bronson, J., when commenting on it in a recent case in New York, and should be qualified as to make it necessary that there should be facts and circumstances existing which would lead the jury to believe that the defendant had reasonable (in proportion to his own lights) ground for his belief, yet with this qualification it is now generally received.(l) And, indeed, as shown by Mr. Justice Bronson, in the case just noticed, after the general though tardy acquiescence in Selfridge’s case, where

(j) 1 Car. & Kir. 134; 8 Scott, N. R. 595. (k) Granger v. State, 5 Yerger, 459.

(l) Shorter v. People, 2 Comstock, 197-202, S. C. 4 Barb. 460; Monroe v. State, 5 Geo. 85; State v. Scott, 4 Iredell, 409; People v. McLeod, 1 Hill, 420; People v. Pine, 2 Bar-

the same view was taken as early as 1805 by Chief Justice Parker of Massachusetts, and after the almost literal incorporation of the leading distinctions of the latter case in the revised Statutes of New York, as well as into the judicial system of most of the States, the point must be considered as finally at rest. Perhaps the doctrine, as laid down originally in Selfridge's case, would have met with a much earlier acquiescence had not the supposed political bias of the court in that extraordinary trial, and the remarkable laxity shown in the framing of the bill and in the adjustment of bail, led to a deep-seated professional prejudice which struck at even such parts of the charge as were indisputably sound.<sup>(m)</sup>

§ 49. In none of the cases which have just been noticed, is the *actual* existence of danger an essential ingredient, and certainly, as the intentions of an assailant are incapable of positive ascertainment, such a danger can never be absolutely shown to exist. It is true that when the point has not been directly before the judicial mind, *dicta* have been thrown out to the effect, that the danger must be such as to alarm a reasonable man, but whenever the requisite state of facts has been presented, courts have not hesitated to say that the danger must be estimated, not by the jury's standard, but by that of the defendant himself. Thus, a very enlightened and learned judge in Pennsylvania, one who would be among the last to weaken any of the sanctions of human life, in a late case directed the jury to take into consideration "the relative characters, as individuals," of the deceased and the defendant, and, in determining whether the danger really was imminent or not, to inquire "whether the deceased was bold, strong, and of a violent and vindictive character, and the defendant much weaker, and of a timid disposition." And to the same effect will be found the cases in the Supreme Courts of Massachusetts and Pennsylvania, to be presently more particularly noticed.

§ 50. If, therefore, a delusion that a party is in danger, whether such delusion be the result of insanity or of physical causes, is a justification of violence adequate to remove the supposed danger,—and the answer of the English judges on this point corresponds with our own,—

bour 168; *Roberts v. Slate*, 3 Georg. 310; *Com. v. Rogers*, *supra*. See generally Wharton on Homicide, 216, 7, 8, 9, &c., and a very interesting series of notes in 7 Bost. Law Rep. (U. S.) 575, 689, &c.

<sup>(m)</sup> In a former work, (Wharton's C. L. 2d ed. 390,) the present writer went into a critical examination of Selfridge's case, and advanced the opinion that the verdict at least, as well as the preliminary proceedings, were inconsistent with a just appreciation of human life, and with the dignity of public justice. This view is by no means retracted; and the gradual development of the political correspondence of those days shows that an approval of Selfridge's course,—the shooting down by a man of thirty of a lad of eighteen, then an undergraduate in Harvard College, *because* the latter thought proper to suppose that the former, whose father he had just posted, might be ready to avenge the insult,—was made a party test. Indeed, John Adams (Cunning. Cor. 70,) tells us that "the great political parties in the State, were arranged under their respective standards on the simple question of the guilt or innocence of an individual under a criminal accusation." But it is due to the excellent jurist who presided at the trial to say that, however, in the reception and adjustment of bail,—two thousand dollars,—he may have been influenced by those political heats to which even the bench in those times was subject, his charge is a fair statement of the English common law, as adapted to our social condition. And however great may have been the zeal with which the case has been assailed, it is now impossible to refuse to recognize it as having been largely and definitely influential in settling this branch of American Jurisprudence.

it is difficult to avoid the conclusion, that a delusion as to the amount of force necessary to obviate the imagined attack should be equally potent. Thus, for instance, it is stated by the English judges, that if the party is under an insane delusion that the deceased is about to take his life, and he kills him to prevent it, he is to be exempt from punishment. The gist of this position consists in the *delusion*. If, therefore, by an insane delusion, or *depravation* of the reasoning faculty, the defendant insanely believes, either that the imagined evil is so intolerable as to make life-taking necessary or justifiable in order to avert it, or that while the evil is of a lesser grade, life-taking is an appropriate and just way of getting rid of it, the same reasoning applies. The principle may logically be stated thus:—

1. Any species of insane delusion exempts from punishment the perpetrator of an act committed under its influence.

2. The belief, unfounded in fact, that a party is in immediate danger of his life from another, may be such a delusion.

Or the belief that taking the life of another is the appropriate remedy for a minor though imagined evil, may be also an insane delusion.

3. Therefore; homicide, under such a delusion, is not liable to punishment.<sup>(n)</sup>

§ 51. The minor premise, it will at once be seen, may be varied, without weakening the conclusion, by inserting in its place any insane delusion, the existence of which would deprive the act of guilty consciousness. That an insane delusion, as to the value or meaning of human life, will have this effect, even though the party himself knows when committing the act that he is doing wrong, and is violating the laws of the land, is illustrated by Lord Erskine, in a well-known case: "Let me suppose," he said, "the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that upon the trial of such a lunatic for murder, you, being on your oaths, were convinced, upon the uncontradicted evidence of one hundred persons, that he believed the man he had destroyed to have been a potter's vessel; that it was quite impossible to doubt that fact, although to other intents and purposes he was sane,—answering, reasoning, acting as men, not in any manner tainted with insanity, converse and reason and conduct themselves. Suppose, further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another, and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious; and that, in short, he had full knowledge of all principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of the disease, he was ignorant of the relation in which he stood to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being?"<sup>(o)</sup>

<sup>(n)</sup> It is important that by "punishment," as here used, should be understood such punishment as is inflicted on persons of sound mind. It is essential, however, to the policy of the present more humane mode of treatment for the insane that, in all cases where a party is acquitted *on ground of insanity*, strict confinement should be directed, in such a way as will exempt the community from any probable recurrence of such delirious outrages. This will hereafter be more fully considered: *post*, § 259-276.

<sup>(o)</sup> Winslow on Plea of Insanity, 6.

Again: in a case which has more than once occurred within the walls of a lunatic asylum, a man fancies himself to be the Grand Lama or Alexander the Great, and supposes that his neighbor is brought before him for an invasion of his sovereignty, and he cuts off his head or throttles him. He knows he is doing wrong; perhaps, from a sense of guilt, he conceals the body: he may have a clear perception of the legal consequences of his act. According to Mr. Wigan, such an association of a consciousness of the objective guilt and consequences of an act with an insane delusion, as to its subjective relation, is readily explained on the principle of the duality of the human mind; but however this may be, it is a matter in which all observers agree that the lunatic is, in most instances, conscious of the civil and social relations of his conduct. (*p*) Nor, even under the severe sanction of the older English text writers (who have, by their failure to reach this point, demonstrated how dangerous it is, with our own imperfect experience, to attempt to codify or dogmatize the laws into a few absolute propositions), has this truth evaded the practical recognition of the courts. Thus, in a case where it was proved that the defendant had taken the life of another under the notion that he was set about with a conspiracy to subject him to imprisonment and death, Lord Lyndhurst, while quoting with apparent entire acquiescence, Hale's doctrine, as promulgated by Sir James Mansfield in Bellingham's case, thought it not too liberal a sweep for him to tell the jury that they might "acquit the prisoner on the ground of insanity, if he did not know, when he committed the act, what the effect of it was with reference to the crime of murder." Certainly, without indulging in any levity, it might be readily imagined that an acquittal would be easy enough if it was necessary, in order to create responsibility, that the party should know the effect of it with reference to a question whose meaning, even to the Court itself, appears to have been enveloped in so much mist. But there can be no doubt, after careful examination of the whole case, that the point Lord Lyndhurst decided was, that a man who, under an insane delusion, shoots another, is irresponsible when the act is the product of the delusion. Such, indeed, on general reasoning, must be held to be the law in this country, and such will it be held to be when any particular case arises which requires its application. The fact that against this view militate certain expressions—*obiter dicta*—in recorded opinions, as well as in the answers of the English judges, will not prevent its practical recognition, any more than Lord Lyndhurst was prevented, by the first class of authorities, from advising the acquittal of Offord, and afterwards maintaining that that acquittal was consistent with the very precedents now cited against it.

§ 52. The delusion, however, must go to the root of the crime; or, in other words, the crime must have been the result of the delusion. Dr. Casper (*q*) has given us a pregnant illustration of this: A merchant, named Schrabber was convicted of cheating by false pretences

(*p*) Wigan on Insanity, &c., London, 1844, 65; Winslow, Plea of Insanity, 16; Ray. Med. Jur. of Ins., § 17; Siebold Gericht, Med. § 219; Pinel Traite sur alienation mentale, 2d ed., Par. 1809, 156; Riel, Fieberlehre, 4 Bd. 396; Groos, Die Lehre von der Mania sine Delirio, Heidelberg, 1830; De Boismont on Halluc., Phil. 1853, 506.

(*q*) Wochenschrift, Nr. 31-32.

and false information, and was sentenced to imprisonment for six years. On an application to the Court to reconsider the sentence, insanity was set up, and it appeared that the prisoner either felt or feigned a belief that he was a legitimate son of the late Duke Charles of Mecklenberg Strelitz; which certainly if not a mere fiction, was an insane delusion. Much reason existed to believe that the whole thing was simulated; but, independently of this, the Court was clear that as the mania, if real, had no connection with his crime, it formed no ground for a revision of the sentence.

3rd. *Where the defendant is impelled by a morbid and uncontrollable impulse to commit the particular act.*

§ 53. The questions propounded to the English judges related solely to the doctrine of insane delusions; and the replies, though containing general expressions, can hardly, even in England, be considered as authoritative in a case where the defence is monomaniac impulse. In this country, the effect of such a defence, as distinguished from that of insane delusion, has been the subject of special consideration. The first case in which it was gravely considered is that of *Commonwealth v. Rogers*, before the Supreme Court of Massachusetts, in the spring of 1844.<sup>(r)</sup> Chief Justice Shaw—whose conservative tendencies on the great sanctions of human life cannot be suspected—found himself, in preparing his charge, embarrassed by the conflict between the dogmas of the older judges and the necessities of the particular case, and there is an evident struggle on his part to preserve as much as he could of the letter of the former, and at the same time to establish a principle by which the latter could be properly respected. He begins—we cite from the authorized report—by laying down two propositions of great breadth. “In order to constitute a crime,” he says, “a person must have intelligence and capacity enough to have a criminal intent and purpose; and if his reason and mental powers are either so deficient that he has no will, no conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts. These extremes,” he then proceeds to state, “are easily distinguished, and not to be mistaken. The difficulty lies between these extremes, in the cases of partial insanity, where the mind may be clouded and weakened, but not incapable of remembering, reasoning, and judging; or so perverted by insane delusion, as to act under false impressions and influences.” To such cases—to those where the mind is not “incapable of judging,” &c., and to those where it acts “under false impressions and influences,”—and to such alone, he applies the “right and wrong” test; reserving to it a very small sphere of action, since the defence of insanity would scarcely be ventured where there was both a capacity to judge, reason, and remember, and a freedom from false “impressions and influences.” Taking up the particular de-

(r) This case is reported with great fullness, in pamphlet shape, by Messrs. Bemes & Bigelow, and is incorporated, in a condensed form, in the 7th volume of Mr. Metcalf's Reports, p. 500.

fence of monomania, which was that advanced in the case before him, he proceeds to state the law, with a liberality in entire accordance with the weight of medical authority. "This" (monomania) "may operate as an excuse for a criminal act in one of two modes. 1. Either the delusion is such that the person under its influence has a real and firm belief of some fact, not true in itself, but which, if it were true, would excuse his act: as where the belief is that the party killed had an immediate design upon his life, and under that belief the insane man kills in supposed self-defence. A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing, is by the command of a superior power, which supersedes all human laws, and the laws of nature. 2. Or this state of delusion indicates, to an experienced person, that the mind is in a diseased state; that the known tendency of that diseased state of the mind is to break out into sudden paroxysms of violence, venting itself in homicide, or other violent acts towards friend and foe indiscriminately; so that, although there were no previous indications of violence, yet the subsequent act, connecting itself with the previous symptoms and indications, will enable an experienced person to say, that the outbreak was of such a character that for the time being it must have overborne memory and reason; that the act was the result of the disease and not of a mind capable of choosing; in short, that it was the result of uncontrollable impulse, and not of a person acted on by motives, and governed by will." \* \* \* "Are the facts of such a character, taken in connection with the opinion of professional witnesses, as to induce the jury to believe that the accused was laboring for days under monomania, attended with delusion, and did thus indicate such a diseased state of the mind, that the act of killing the warden, was to be considered as an outbreak or paroxysm of disease, which for the time being overwhelmed and superseded reason and judgment, so that the diseased was not an accountable agent? If such was the case, the accused is entitled to an acquittal."

§ 54. In the fall of 1846 a similar defence was started before three of the judges of the Supreme Court of Pennsylvania, then holding an Oyer and Terminer in Philadelphia. In his charge to the jury, Chief Justice Gibson—a most able judge, thoroughly disciplined in and wedded to the common law, but at the same time endowed with an energy of perception and a delicacy of appreciation which gave him a remarkable zest for and a mastery over collateral sciences—after, in the first place, vehemently repudiating the doctrine that partial insanity excuses any thing but its direct results, and sliding, in reference to such cases, into the "right and wrong" test, proceeds: "But there is a *moral or homicidal* insanity, consisting of an irresistible inclination to kill or to commit some other particular offence.<sup>(s)</sup> There may be an unseen ligament pressing on the mind, drawing it to *consequences which it sees but cannot avoid*, and placing it under a coercion which, while its results are clearly perceived, is incapable of

(s) The charge was oral, having been reported by the present writer, and but hastily revised by the Judge himself, which may account for the want of literal exactness in this and other expressions.



resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance. It is seldom directed against a particular individual; but that it may be so, is proved by the case of the young woman who was deluded by an irresistible impulse to destroy her child, *though aware of the heinous nature of the act*. The frequency of this constitutional malady is fortunately small, and it is better to confine it within the strictest limits. If juries were to allow it as a general motive, operating in cases of this character, its recognition would destroy social order as well as personal safety. To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature."

§ 55. In a still earlier case in Pennsylvania, Judge Lewis, then presiding in Lycoming county, and now Chief Justice of Pennsylvania, a judge by whom the subject of medical jurisprudence has received peculiar and careful attention—recognized the same doctrine, though with even greater reluctance. "Moral insanity arises from the existence of some of the natural propensities in such violence, that it is impossible not to yield to them. It bears a striking resemblance to vice, which is said to consist in an undue excitement of the passions and will, and in their irregular or crooked actions leading to crime. It is therefore to be received with the utmost scrutiny. It is not generally admitted in legal tribunals as a species of insanity which relieves from responsibility for crime, and it ought never to be admitted as a defence, until it is shown that these propensities exist in such violence, as to subjugate the intellect, control the will, and render it impossible for the party to do otherwise than yield. Where its existence is fully established, this species of insanity relieves from accountability to human laws. But this state of mind is not to be presumed without evidence, nor does it usually occur without some premonitory symptoms indicating its approach." (t)

§ 56. And, indeed, in all cases where clear proof is not presented of the existence of such a malady—difficult though it be to secure—it is important to keep in mind the striking observations of Lord Brougham, when the question was in discussion in the House of Lords. "With respect to the point, of a person being an accountable being, that was, an accountable being to the law of the land, a great confusion had pervaded the minds of some persons whom he was indisposed to call reasoners, who considered accountability in its moral sense, as mixing itself up with the only kind of accountableness with which they, as human legislators, had to do, or of which they could take cognizance. He could conceive of the case of a human being of a weakly constituted mind, who might by long brooding over real or fancied wrongs, work up so perverted a feeling of hatred against an individual that danger might

(t) The same view was, some years after, repeated by the same enlightened and able judge; Lewis Cr. Law, 404; and by Judge Edmonds, (2 Am. Jour. of Ins.); and Judge Whiting, (Freeman's Trial—Pamph.)

occur. He might not be deluded as to the actual existence of injuries he had received, but he might grievously and grossly exaggerate them, and they might so operate upon a weakly framed mind and intellect as to produce crime. He could conceive that the Maker of that man, in his infinite merey, having regard to the object of his creation, might deem him not an object for punishment. But that man was accountable to human tribunals in a totally different sense. Man punished crime for the purpose of practically deterring others from offending, by committing a repetition of the like act. It was in that sense only that he had any thing to do with the doctrine of accountable and not accountable. He could conceive a person whom the Deity might not deem accountable, but who might be perfectly accountable to human laws.”(u)

§ 57. Chief Justice Hornblower, it is true, in a charge, which bears the impress of his single authority, not having been reviewed by the Court, in bane, took still more decided ground, involving an emphatic disclaimer of moral insanity *in toto*. At the same time he rejects in a manner quite unexampled for its summariness, all the old tests, and reduces the inquiry to a point which, after all, leaves the widest margin. “In my judgment, the true question to be put to the jury is, whether the prisoner was *insane* at the time of committing the act; and in answer to that question there is little danger of a jury’s giving a negative answer, and convicting a prisoner who is proved to be insane on the subject matter relating to or connected with the criminal act, or proved to be *so far* and *so generally* deranged as to render it difficult, or almost impossible, to discriminate between his sane and insane acts.”(v) Had the most liberal doctrine of the test writers been given instead of this, the jury could hardly have been allowed greater latitude.

The great weight of American judicial authority, therefore, inclines to the recognition of homicidal insanity as a distinct basis of defence. And, in fact, this concession is but a legitimate consequence of the position already generally noticed, and to be presently more specifically considered, that the testimony of medical men is, on medical questions, to be received by Court and jury as authoritative.

§ 58. When such a view is taken there can be no doubt of the result. Those to whom the guardianship and study of the insane is committed, unite in saying that moral insanity is a distinct, well known malady, which arbitrarily impels its victim to involuntary crimes which he detests but cannot avoid. Judge Story, with his usual tenderness, refused to allow the conviction of a young woman who in a fit of puerperal mania threw her infant overboard, though she was perfectly conscious of the enormity of the act;(w) and what this humane and very able judge did, in the teeth of the old dogmas, from the necessity of the case, the modern psychologists teach to be in accordance with experience and right reason. The English and American writers, it may not be out of place here to notice, are distinct to this effect.(x)

§ 59. Nor is the testimony of the Continental Psychologists less em-

(u) Hans. Par. Deb. LXVII. 728.

(v) State v. Spencer, 1 Zabriskie, 196.

(w) U. S. v. Hewson, 7 Bost. Law Rep. 361.

(x) Winslow on Plea of Insan. 35, 64; Ray’s Med. Jur. 188, 192, 218; Guy’s Med. Jur. 329; Rush on the Mind, 261; Wigan on Insanity, 81; 1 Beck’s Med. Jur. 10th Ed. 774-5; *post* § 174—221.

phatic, as will hereafter be more fully considered when the general psychological characteristics of insanity are considered.(y) It is true that more recent observers have doubted the metaphysical accuracy of the definition given in the older treatises—*Mania sine delirio*. Thus it is justly noticed by Schürmayer,(z) that it is contrary to all received psychological theories to suppose that a particular passion or moral relation can become depraved without an intellectual inflection to some extent corresponding. But be this as it may, there is a uniform recognition by all the authoritative writers of this particular species of insanity, whether it be generally defined according to the popular English idiom, as moral insanity or moral monomania, or according to the phraseology of Etmüller as *Melancholia sine delirio seu perturbatio mentis melancholia sine delirio*, or that of Pinel, as *Manie sans delire*; or whether as by the more recent and exact authorities, it be presented rather through the particular forms in which it exhibits itself, than through a positive and absolute definition.

§ 60. The limits of the present work will not permit a full consideration of the psychological and physiological reasoning by which the absurdity as well as the impossibility of the right and wrong test is demonstrated; and less difficulty is felt at this omission, as the task has been performed with great ability by Dr. Ray, in the preliminary views to his work on Insanity; by Mr. Winslow, in his essay on the Plea of insanity; by Mr. Wigan, in his remarkable treatise on the Duality of the Human Mind. Two prominent points, however, cannot be passed over:

1. The “right and wrong test” can never be rightly applied, because it rests in the conscience, which no human eye can penetrate.

2. It is useless, even if possible, as almost every case of decided insanity is accompanied with a moral sense.(a)

§ 61. To the illustrations which are adduced of this position by Esquirol, de Boismont, Ray, and Winslow, the present writer may be permitted to add one within the range of his own experience. A man named John Billman, who had been sent to the Eastern Penitentiary of Pennsylvania for horse stealing, murdered his keeper under circumstances of great brutality, and yet with so much ingenuity as to elude suspicions of his intentions, and almost conceal his flight. He hung a noose on the outside of the small window which is placed in the door of the cells to enable persons outside to look in. He then induced the keeper, in order to look at something on the floor directly at the foot of the door, to put his head entirely through. The noose was then drawn, and but for an accident, the man would have been suffocated. Notwithstanding this attempt, the same keeper was inveigled into the cell alone, a few days afterwards, on the pretence of Billman being sick, and was there killed by a blow on the head with a piece of washboard. Billman undressed him; changed clothes with him; placed him on the bed in such a position as to induce the general appearance of his being there himself; traversed in his assumed garb, the corridor with an unconcerned air; addressed an apparently careless question to the

(y) *Post* § 174–221.

(z) *Gericht. Medicin*, Erlangen, 1850, § 549.

(a) Winslow's *Plea of Insan.* 6, 11, 19; *Ray Med. Jur.* 34, 5, 6.

gate-keeper, and sauntered listlessly down the street on which the gate opened. He was, however, soon caught; but his insanity was so indisputable, that the prosecuting authorities, after having instituted a careful and skilful medical examination, became convinced of his irresponsibility, and united upon the trial in asking a verdict of acquittal on the ground of insanity. He was then remanded to confinement, under the Pennsylvania practice; and some time afterwards, when in a communicative mood, disclosed the fact of his having several years back murdered his father under circumstances which he detailed with great minuteness and zest. Inquiries were instituted, and it was found that he had told the truth. The father had been found strangled in his bed; the son had been arrested for the crime; but so artfully had he contrived the homicide, that he was acquitted by means of an alibi, got up by means of a rapid ride at midnight, and a feigned sleep in a chamber, into which he had clambered by a window. Here, then, was not only a sense of guilt, but a keen appreciation of the consequences of exposure, and an abundance of evidence of long harbored intention and intelligent design.

A still more emphatic illustration of the same sense of accountability among lunatics, as a class, is to be found in an anecdote related by Dr. Winslow.<sup>(b)</sup> When Martin set York Minster on fire, a conversation took place among the inmates of a neighboring lunatic asylum, having reference to this general topic. The question was, whether Martin would be hanged, when, in the course of the discourse, one madman announced to the others a position, in which they all acquiesced, that Martin would not be hanged, because he was "one of themselves." It certainly will not be maintained that a consciousness of the legal relations of crime, such as this remark exhibited, confers responsibility where it does not otherwise exist.

#### IV. HOW INTOXICATION AFFECTS RESPONSIBILITY FOR CRIME.

The law in this connection may be summed up as follows:—

1st. Insanity, produced by *delirium tremens*, affects responsibility in the same way, as insanity produced by any other cause.

2nd. Insanity, immediately produced by intoxication, does not destroy responsibility, if the patient, when sane and responsible, makes himself intoxicated.

3rd. While drunkenness *per se* is no defence to the *fact* of guilt, yet when the question of *intent* or *premeditation* is concerned, it becomes a material item of consideration.

1st. *Insanity produced by delirium tremens affects the responsibility in the same way as insanity produced by any other cause.*

§ 62. If a man who, laboring under *delirium tremens*, kills another, is made responsible, there is scarcely any species of insanity which on

(b) Lectures, &c. 108.

like principles would not be subjected to the severest penalties of criminal law. "It may be the immediate effect," says Dr. Ray,<sup>(c)</sup> "of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days total abstinence from spirituous liquors. It is also very liable to occur in this latter class when laboring under other diseases, or severe external injuries, that give rise to any degree of constitutional disturbance. The approach of the disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first the delirium is not constant, the mind wandering during the night, but, during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature of the disease. Occasionally the delirium occurs at an earlier period of the disease, and may even be the first symptom of any disorder. This state of watchfulness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the disease is fatal; and whether subjected to medical treatment or left to itself, neither its symptoms nor its duration are materially modified. The character of the delirium in this disease is peculiar, bearing a stronger resemblance than any other form of mental derangement, to dreaming. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease, continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself, for instance, to be in some peculiar situation, or engaged in certain occupations, according to each individual's habits and profession; and his discourse and conduct are conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably, the patient manifests, more or less, feelings of suspicion or fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment, arranging their plans and preparing to rush into his room; or that he is in a strange place, where he is forcibly detained and prevented from going to his own home. One of the most common hallucinations is, to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and filling every nook and corner of his apartment. The extreme terror which these delusions often inspire, produces in the countenance an unutterable expression of anguish, and, in the hope of escaping from his fancied tormentors, the wretched patient

(c) Med. Jur. 438.

endeavors to cut his throat or jump from the window. Under the influence of these terrible apprehensions he sometimes murders his wife or attendant, whom his disordered imagination identifies with his enemies, though he is generally tractable, and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before.”(cc)

§ 63. As far as concerns temporary incapacity, therefore, *delirium tremens* acts in the same way as any other *delirium*, and when complete, destroys the moral as well as the intellectual responsibility. The only question, therefore, is whether there is anything in the *source* from which it is derived which requires that it should be exempted from the general rule by which delirium forms a good defence to an indictment for a criminal offence. In the *dicta* of one or two of the older law writers, this exception is sought to be sustained on the ground that a drunkard, in every stage, is a voluntary demon, and that he can no more use his consequent mania as a defence, than can the man who kills another by a sword allege that it was the sword, and not himself, that was the guilty agent. But to this the answer is three-fold: (1) that *delirium tremens* is not the *intended* result of drink in the same way that drunkenness is; (2) that there is no possibility that *delirium tremens* will be voluntarily generated in order to afford a cloak for a particular crime; (3) that, so far as original cause is concerned, it is not peculiar in being the offspring of indiscretion or guilt, for such is the case with almost every other species of insanity. These points scarcely need to be expanded. The fact is, *delirium tremens* runs the same course with almost every other species of insanity known in the criminal courts. It is the result, like most other manias, of prior vicious indulgence; but it differs from intoxication in being shunned rather than courted by the patient, and in being incapable of voluntary assumption for the purpose of covering guilt.

§ 64. Reason, therefore, undoubtedly teaches us that a person who is incapacitated from moral and intellectual agency, by reason of *delirium tremens*, is irresponsible; and such is the law, as decided in repeated instances.(d) Thus, in the leading American case, *Story, J.*, declared criminal responsibility not to attach where the delirium is the “remote consequence” of voluntary intoxication, “superinduced by the antecedent exhaustion of the party, arising from gross and habitual drunkenness. However criminal,” he proceeded to say, “in a moral point of view, such an indulgence is, and however justly a party may be responsible for his acts arising from it, to Almighty God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Had the crime been committed when Drew (the defendant) was in a fit of intoxication, he would have been liable to be convicted of murder. As he was not then intoxicated, but merely insane from an abstinence from liquor, he cannot be pronounced guilty of the offence. The law looks to the immediate, and not to the remote

(cc) See an interesting case of *Oinomania* in 8 Am. Jour. of Insan. 3.

(d) *U. S. v. Drew*, 5 Mason, U. S. Rep. 28; *Bennett v. State*, Mart. & Yerg. 133; *Cornwell v. State*, *ibid.* 14; *R. v. Thomas*, 8 C. & P. 820; *R. v. Meakin*, 7 C. & P. 299; *Renic's case*, 1 Lew. C. C. 76; 1 Hale, 32; 1 Rus. on Cr. 7; 4 Black. Com. 26.

cause; to the actual state of the party, and not to the causes which remotely produced it. Many species of insanity arise, remotely, from what, in a moral view, is a criminal neglect or fault of the party; as from religious melancholy, undue exposure, extravagant pride, ambition, &c. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence."

§ 65. In a still earlier case of at least equal authority, the court told the jury that if they "should be satisfied by the evidence, that the prisoner, at the time of committing the act charged in the indictment, was in such a state of mental insanity not produced by the immediate effects of intoxicating drinks, as not to have been conscious of the moral turpitude of the act, they should find him not guilty." (e) And expressly to this very point is a very recent case, where a federal judge of high authority told the jury that if the defendant was "so far insane as not to know the nature of the act, nor whether it was wrong or not, he is not punishable, although such *delirium tremens* is produced by the voluntary use of intoxicating liquors." (f)

2d. *Insanity immediately produced by intoxication does not destroy responsibility, where the patient when sane and responsible, made himself voluntarily intoxicated.*

§ 66. There can be no doubt on this point, either on principle, policy or authority. Drunkenness, so long as it does not prostrate the faculties, cannot be distinguished from any other kind of passion. If the man who is maddened by an unprovoked attack upon his person, his reputation or his honor, be nevertheless criminally responsible,—if hot blood form no defence to the fact of guilt,—it would be a most extraordinary anomaly if drunkenness voluntarily assumed should have that effect, independently of all extraneous provocation whatever. If, as is assumed,—or else there is no ground for the exception,—drunkenness so incapacitates the reason as to make it at least partially incapable of distinguishing between right and wrong, or else so inflames the passions as to make restraint unupportable, then comes in the familiar principle that the man who voluntarily assumes an attitude or does an act which is likely to produce death in others, is responsible for the consequences, even though he had at the time no specific intentions to take the life of any one. Thus, if a man breaking an unruly horse wilfully ride him among a crowd of persons, the probable danger being great and apparent, or if a workman out of sport or mischief, slide a plank from the top of a roof into a crowded street, or if a manufacturer deliberately and knowingly leave in the cellar of an uninhabited house a keg of powder, and death ensue, it is murder at common law. (g) And so it must also be held that the steamboat captain who deliberately dashes his boat into a crowd of smaller craft, so that life is taken, is in like manner responsible. There can be no question as to this. The man who voluntarily arms himself with weapons of destruction, and then throws them hap-

(e) *U. S. v. Clarke*, 2 Cranch. C. C. R. 158.

(f) *U. S. v. McGlue*, 1 Curtis, C. C. R. 1.

(g) See Wharton on Homicide, 45, where these points are fully established.

hazard among the innocent or unoffending, without even the excuse of specific malice or provocation, is at least as dangerous as the assassin who picks out his victim in advance. Against the last there may be some checks,—against the first none. Caution may ward off the one, or innocence escape it, but to the other the most innocent and benevolent would be as likely to fall victim as the most malevolent. The mind in the last case may be inflamed with revenge,—that “Wild Justice,” as Bacon calls it,—which though no defence, is yet capable of being reached by reason and averted by care. But in the former, the motive is mere gross sensual indulgence, and the blow cannot be restrained by strength, or avoided by inoffensiveness.

§ 67. As a mere matter of legal *policy*, the same position holds good. There never could be a conviction for homicide if drunkenness avoided responsibility. (*gg*) As it is, most of the premeditated homicides are committed under the stimulus of liquor. The guilty purpose is at first sedately conceived, but there are few men whose temperaments are so firmly knit as to enable them to enter a scene of blood, without first fortifying themselves for the task to be performed. The head dreads the heart’s cowardice, and seeks to insure against it by drink. It will be found in fact that there is scarcely a case of violent homicide, in which it does not appear that the defendant strengthened his nerves for the execution of his guilty plan by drink; just in the same way that he strengthened his hand by the fatal weapon. If, therefore, drunkenness imparts irresponsibility, there are not only but few convictions which have heretofore taken place which are good, but there will be no convictions at all for the future. If the assassin will not take liquor to strengthen his nerves, he will to avoid conviction. There would be no species of *deliberate* homicide, under such a dispensation, that would not avoid punishment. It would be the indeliberate only that would be made responsible.

§ 68 The tenor of common and civil law authority to this effect is clear. Even the German text writers, who generally attenuate to so wide and thin a texture the doctrine of moral responsibility, do not undertake to treat drunkenness as a defence. Sir E. Coke scarcely goes beyond the tenor of civil as well as of common law writers, when he says, “As for a drunkard who is *voluntarius demon*, he hath, as has been said, no privilege thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it. *Omne crimen ebrietas et incendit et detegit.*” (*h*) And although now drunkenness cannot be said to aggravate a crime in a judicial sense, yet it is well settled that it forms no defence to the fact of guilt. Thus Judge Story, in a case already cited, after noticing that insanity, as a general rule, produces irresponsibility, went on to say, “An exception is, when the crime is committed by a party while in a fit of intoxication, the law allowing not a man to avail himself of the excuse of his own gross vice and misconduct, to shelter himself from the legal consequences of such crime.” Lord Hale says, “The third sort of madness is that which is *dementia affectata*, namely, drunkenness. This vice doth deprive a man of his reason, and puts many men into a perfect but temporary

(*gg*) See *post*, § 92.

(*h*) Co. Litt, 247, *a*.



phrensy; but by the laws of England, such a person shall have no privileges by his voluntarily contracted madness, but shall have the same judgment as if he were in his right senses.”(i) And so Parke, B., a very authoritative English crown judge, said to a jury in 1837, “I must also tell you, that if a man makes himself voluntarily drunk, it is no excuse for any crime he may commit whilst he is so; he takes the consequences of his own voluntary act, or most crimes would go unpunished.”(j) And Alderson, B., said in 1836, “If a man chooses to get drunk, it is his own voluntary act; it is very different from madness which is not caused by any act of the person. That voluntary species of madness which it is in a party’s power to abstain from, he must answer for.”(k) In harmony with this is the whole current of English authority.(l)

§ 69. In this country the same position has been taken with marked uniformity, it being invariably held that drunkenness is no defence to the *factum* of guilt; the only point about which there has been any fluctuation, being the extent to which evidence of drunkenness is receivable to determine the exactness of the intent or the extent of deliberation.(m)

3d. *While Intoxication per se is no defence to the fact of guilt, yet when the question of intent or premeditation is concerned, it is material for the purpose of determining the precise degree.*

§ 70. Great caution is undoubtedly necessary in the application of this doctrine, for, as has already been remarked, there are few cases of premeditated violent homicide, in which the defendant does not previously nerve himself for the encounter by liquor, and there would in future be none at all, if the fact of being in liquor at the time is enough to disprove the existence of premeditation. The true view, therefore, would seem to be, not that the fact of liquor having been taken is of any value at all on the question of intent or premeditation, but that when there is no evidence of premeditation *aliunde*, and where the defendant is proved at the time of the occurrence to be in a state of mental confusion of which drink was the cause, the fact of such mental confusion may be received to show either that there was no specific intent to take life, or that there was no positive premeditation. In the cases arising out of the statutes resolving murder into two degrees, in which the distinguishing test is a specific intent to take life, this position receives several pregnant illustrations. Thus, in the Philadelphia riot cases of 1844, where it was shown that bodies of men were inflamed by sectarian and local prejudices, and blinded by a wild ap-

(i) 1 Hale, 7; 4 Black. Com. 26; Wharton’s C. L. (3d. edition,) 92; 1 Gabbett, C. L. 9; and see a very learned article in 6 Law Rep. (N. S.) 554.

(j) *R. v. Thomas*, 7 C. & P. 817.

(k) *R. v. Meakin*, 7 C. & P. 297.

(l) *Burrow’s Case*, 1 Lewin C. C. 75; *Rennie’s Case*, 1 Lewin C. C. 76; 1 Russel on Cr. 8.

(m) *U. S. v. Clarke*, 2 Cranch C. C. R. 158; *U. S. v. McGlue*, 1 Curtis C. C. R. 1; *Kelley v. State*, 3 Smedes & Mar. 518; *Cornwall v. State*, Mar. & Yer. 147; *Pirtle v. State*, 9 Humph. 663; *State v. John*, 8 Ired. 330; *State v. Turner*, 1 Wright, 30; *Schaller v. State*, 14 Missouri, 502; *Wh. Cr. Law*, (3d ed.,) 92; *Wh. on Homicide*, 369.

prehension of danger to such an extent as to make them incapable of discrimination, or of precise or specific purpose, it was held that they could not be considered as guilty of that species of "wilful and deliberate" murder which constitutes murder in the first degree.<sup>(n)</sup> Precisely analogous to this is the case of the drunkard, who in a fight slays an antagonist without any prior sober premeditation. In his intoxication he is incapable of such mental action as the term "premeditates" describes. His mental condition may be such as to deprive him of the capacity to form a "specific intent" to take life, or to do any thing else. And yet at the same time, at common law, the offence would, strictly speaking, fall under the head of murder, for it would possess the incident of malice, and would be independent of that of provocation. Under such circumstances the offence properly is to be ranked as murder in the second degree, and such has repeatedly been decided by the courts.<sup>(o)</sup>

§ 71. The same general view is taken as to the question of *intent*.

(n) Wharton on Homicide, 371, 2.

(o) *Com. v. Jones*, 1 Leigh, 612; *Com. v. Haggerty*, Lewis' C. L. 403; *Pirtle v. State*, 9 Hump. 434; *Swan v. State*, 4 Hump. 131; *Penns. v. Fall*, Addison, 257. In a very recent case in Tennessee, the Court thus speak: "Upon the trial, there was evidence that the prisoner was intoxicated at the time he committed the homicide. Upon the subject of the defendant's intoxication told the jury that 'voluntary intoxication is no excuse for the commission of crime; on the contrary it is considered by our law as rather an aggravation; yet if the defendant was so deeply intoxicated by spirituous liquors at the time of the killing, as to be incapable of forming in his mind a design deliberately and premeditatedly to do the act, the killing under such a state of intoxication, would only be murder in the second degree.' It is insisted that his honor did not state the principle upon this subject, as it has been ruled by this court. In the case of *Swan v. the State*, Judge Reese, who delivered the opinion of the Court, says: 'But although drunkenness in point of law constitutes no excuse or justification for crime, still, when the nature and essence of a crime is made to depend by law, upon the peculiar state and condition of the criminal's mind at the time, and with reference to the act done, drunkenness, as a matter of fact, affecting such state and condition of the mind, is a proper subject for consideration and inquiry by the jury. The question in such case is, what is the mental status? It is one of self-possession, favorable to a fixed purpose, by deliberation and premeditation, or did the act spring from existing passion, excited by inadequate provocation, acting, it may be, on a peculiar temperament, or upon one already excited by ardent spirits? In such a case it matters not that the provocation was inadequate, or the spirits voluntarily drank; the question is, did the act proceed from sudden passion, or from deliberation or premeditation? What was the mental status at the time of the act, and with reference to the act? To regard the fact of intoxication as meriting consideration in such a case, it is not to hold that drunkenness will excuse crime, but to inquire whether the very crime which the law refines and punishes, has been in point of fact committed. In these remarks the Court intend to be understood as distinctly indicating, that a degree of drunkenness by which the party was greatly excited, and which produced a state of mind unfavorable to deliberation and premeditation, although not so excessive as to render the party absolutely incapable of forming a deliberate purpose, might be taken into consideration by a jury, in determining whether the killing was done with premeditation and deliberation.' The whole subject was ably reviewed by Judge Turley, in the case of *Pirtle v. the State*. In delivering the opinion of the Court, in that case, the Judge says, at page 671: 'It will frequently happen necessarily, when the killing is of such a character as the common law designates as murder, and it has not been perpetrated by means of poison, or by lying in wait, that it will be a vexed question, whether the killing has been the result of sudden passion produced by a cause inadequate to mitigate it to manslaughter, but still sufficient to mitigate it to murder in the second degree, if it be really the true cause of the excitement, or whether it has been the result of premeditation and deliberation; and in all such cases, whatever few is able to cast light upon the mental status of the offenders is legitimate proof: and among others, the fact that he was at the time drunk; not that this will excuse and mitigate the offence, if it were done wilfully, deliberately, maliciously, and premeditatedly; (which it might

Thus in an Ohio case, it was very properly held, that when the charge was knowingly passing counterfeit money, with intent to cheat, the drunkenness of the defendant at the time of the offence, was a fit subject for the consideration of the jury, there being no ground to suppose that the defendant knew the money to be counterfeit *before* he was drunk.<sup>(p)</sup> And when the defendant was indicted for an attempt to commit suicide by drowning, and it was alleged that she was at the time unconscious of the nature of her act from drunkenness, Jervis, C. J., said to the jury, "If the prisoner was so drunk as not to know what

well be, though the perpetrator was drunk at the time,) but to show that the killing did not spring from a premeditated purpose, but sudden passion, excited by inadequate provocation, such as might reasonably be expected to arouse sudden passion and heat, to the point of taking life, without premeditation and deliberation.' Here the Court explicitly lays down the rule to be, that in all cases where the question is between murder in the first and murder in the second degree, the fact of drunkenness may be proved, to shed light upon the mental status of the offender, and thereby to enable the jury to determine whether the killing sprung from a premeditated purpose, or from passion excited by inadequate provocation. And the degree of drunkenness which may then shed light upon the mental state of the offender, is not alone that excessive state of intoxication, which deprives a party of the capacity to frame in his mind a design deliberately and premeditatedly to do an act; for the court says that in the state of drunkenness referred to, a party will may be guilty of killing wilfully, deliberately, maliciously, and premeditatedly; and if he so kill, he is guilty as though he were sober. The principle laid down by the Court is, that when the question is, can drunkenness be taken into consideration, determining whether the party be guilty of murder in the second degree, the answer must be, that it cannot; but when the question is, what were the actual mental state of the perpetrator, at the time the act was done, was it one of deliberation and preparation, then it is competent to show any degree of intoxication that may exist, in order that the jury may judge, in view of such intoxication, in connection with all the other facts and circumstances, whether the act was premeditatedly and deliberately done. The law often implies malice from the manner in which the killing was done, or the weapon with which the blow was stricken. In such case it is murder, though the perpetrator were drunk. And no degree of drunkenness will excuse in such case, unless by means of drunkenness an habitual or fixed madness be caused. The law in such cases does not seek to ascertain the actual state of the perpetrator's mind, for the fact from which is implied having been proved, the law presumes its existence, and proof in opposition to this presumption, is irrelevant and inadmissible. Hence a party cannot show he was so drunk as not to be capable of entertaining a malicious feeling. The conclusion of law is against him. But when the question is, whether a party is guilty of murder in the first degree, it becomes indispensable that the jury should form an opinion as to the actual state of mind with which this act was done. All murder in the first degree, (except that committed by poison, and by lying in wait,) must be perpetrated wilfully, deliberately, maliciously, and premeditatedly. The jury must ascertain as a matter of fact, that the accused was in this state of mind when the act was done. Now according to the cases of *Swan v. the State*, and *Pirtle v. the State*, any fact that will shed light upon this subject, may be looked to by them, and may constitute legitimate proof for their consideration. And among other facts, any state of drunkenness being proved, it is a legitimate subject of inquiry, as to what influence such intoxication might have had upon the mind of the offender, in the perpetration of the deed. We know that an intoxicated man will often, upon a slight provocation, have his passions excited and rashly perpetrate a criminal act. Now, it is unphilosophical for us to assume that such a man would in the given case, be chargeable with the same degree of premeditation and deliberation, that we would ascribe to a sober man, perpetrating the same act upon a like provocation. It is in this view of the question, that this court held, in *Swan's case*, and in *Pirtle's case*; that the drunkenness of a party might be looked to by the jury, with the other facts in the case, to enable them to decide whether the killing were done deliberately and premeditatedly. But his Honor, the circuit Judge, told the jury, that drunkenness was an aggravation of the offence, unless the defendant was so deeply intoxicated, as to be incapable of forming in his mind a design deliberately and premeditatedly to do the act. In this charge there is error, for which the judgment must be reversed. Reverse the judgment, and remand the cause for another trial." *Hale v. State*, 11 *Humph.* 154.

(p) *Pigman v. State*, 14 *Ohio*, 555.

she was about, how can you find that she *intended* to destroy herself?"<sup>(q)</sup> So again, when the charge was assault with intent to murder, Patterson, J., said, "A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence. If you are not satisfied that the prisoners, or either of them, had formed a positive intention of murdering the child, you may find them guilty of an assault."<sup>(r)</sup>

Beyond this the advance has been fluctuating. The furthest step taken was in an English case, decided in 1819,<sup>(s)</sup> where Holroyd, J., is reported by Sir W. Russell, who adopts his opinion as text law, to have said, that the fact of drunkenness might be taken into consideration to determine the question whether an act was premeditated or done only with sudden heat and impulse. This would make drunkenness an item in every question of provocation or hot blood, and would of course open the way to the same difficulties as to general policy, which we have already pointed out in another connection. In 1835, however, this case was expressly repudiated by Parks, J., who said, in referring to Holroyd, J.'s language, as just given, "Highly as I respect that late excellent judge, I differ from him, and my brother Littledale agrees with me. He once acted upon that case, but afterwards retracted his opinion. There is no doubt that that case is not law. I think there would be no safety in human life, if it were to be considered as law."<sup>(t)</sup> But the very next year, Alderson, B., in a case of stabbing, retraced at least a part of the retreat which had been thus so emphatically sounded. "It is my duty to tell you," he said, "that the prisoner being intoxicated, does not alter the nature of the offence. If a man chooses to get drunk, it is his own voluntary act; it is very different from a madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for. *However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him, if drunk, when he made an intemperate use of it, as you would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party.*"<sup>(u)</sup> Perhaps this is doing no more than reiterating the principle we have already announced, that when there is evidence of *sober* premeditation, intermediate drunkenness cannot be received to affect the question of intent; but that, when there is no such evidence, it can. And it would hardly be possible to strain farther than this the following charge, in 1837, by Parke, B., (to be distinguished from Park, J., whose opinion, two years before, has been just noticed)—"I must tell you, that if a man makes himself voluntarily drunk, that is no excuse for any crime he may commit while he is so; he must take the consequence of his own voluntary act; or most crimes would otherwise be unpunished. But drunkenness may be taken into consideration in cases where what the law deems sufficient provocation

(q) R. v. Moore, reported 6 Law Rep., (N. S.), 581. (r) R. v. Cruse, 8 C. & P., 541.

(s) R. v. Grindley, 1 Rus. on Cr. 8, note n.

(t) R. v. Carrol, 7 C. & P., 145.

(u) R. v. Meakin, 7 C. & P., 297.

has been given; because the question is, in such cases, whether the fatal act is to be attributed to the passion of anger, excited by the previous provocation, and that passion is more easily excitable in a person when in a state of intoxication, than when he is sober. So, where the question is, whether words have been uttered with a deliberate purpose, or are merely low and idle expressions, the drunkenness of the person uttering them is proper to be considered. But if there is really a previous determination to resent a slight affront in a barbarous manner, the state of drunkenness in which the prisoner was, ought not to be regarded, for it would furnish no excuse. You will decide whether the subsequent act does not furnish the best means of judging what the nature of the previous expression really was.”(v)

§ 72. The American cases present the same general result, depending in principle, if not in terms, on the position that where the encounter was sudden, and the defendant, prior to such encounter, had no malice or old grudge, intoxication at the time of the encounter, can be taken into consideration, to ascertain whether the defendant, when under a legal provocation, acted from malice or from sudden passion.(w) These cases have been arranged as follows, by a late learned writer.(x)

“In 1848 the question of intoxication was before the Supreme Court of Alabama, on an indictment for an assault with intent to kill. The Court was asked in that case to charge the jury, that, “although drunkenness does not incapacitate a man from forming a premeditated design of murder, yet as it clouds the understanding and excites passion, it might be evidence of passion only, and of a want of malice and design.” This the Court refused, but told the jury that “drunkenness could have no effect in their consideration.” The prisoner excepted, and on the hearing in full Court, Chilton, J., declared that it was a general rule, that although drunkenness reduces a man to a state of temporary insanity, it does not excuse him, or palliate an offence committed in a fit of intoxication, and which is the immediate result of it; and that if the prisoner had killed the deceased with the deadly weapon (a knife) with which he stabbed him, in a state of intoxication, the crime would not have been reduced from murder to manslaughter by his intoxication, which must be presumed, in absence of contrary evidence, to be voluntary; and the Court remark, upon the cases of *Penna v. Nutall*.(y) and *Swan v. The State*.(z) that there it was important to ascertain whether the homicide was that “*wilful, deliberate, malicious, and premeditated* killing,” which, by statute, constituted murder in the first degree. The mental state required for that crime, being one of deliberation and premeditation, the fact of the prisoner’s drunkenness was material, not as an excuse for the crime, but to show it had not been committed. *The State v. Bullock*.(a) Possibly this case may have gone too far in refusing to allow drunkenness to be given in evidence upon question of the intention. The Supreme Court of North Carolina has declared the same law. In 1848 a prisoner was indicted for murder. One defence was drunkenness. The judge told the jury that

(v) *R. v. Thomas*, 7 C. & P., 817.

(w) See *Schaller v. State*, 14 Missouri, 502.

(y) *Add.* 257.

(z) 4 *Humph.* 136.

(x) 6 *Law Rep.*, (N. S.,) 556, &c.

(a) 13 *Alabama*, 413, A. D. 1848.

drunkenness would not lessen the prisoner's guilt, if they believed him sane before he became drunk. A new trial being moved for, on the ground of misdirection, Battle, J. said, "All the writers on the criminal law, from the most ancient to the most recent, so far as we are aware, declare that voluntary drunkenness will not excuse a crime committed by a man otherwise sane, while acting under its influence. Even the cases relied on by the counsel for the prisoner, *Rex v. Meakin*,<sup>(b)</sup> *Rex v. Thomas*,<sup>(c)</sup> all acknowledge the general rule; but they say that when a legal provocation is proved, intoxication may be taken into consideration, to ascertain whether the slayer acted from malice or from sudden passion, excited by the provocation. Whether the distinction is a proper one or not we do not pretend to say. It has been doubted in England, *Rex v. Carroll*,<sup>(d)</sup> and it is a dangerous one, and ought to be received with great caution. But whether admitted or not, has no bearing upon the present case. There is not a particle of testimony to show that the prisoner was acting, or can be supposed to have been acting under a *legal* provocation; and there was therefore no cause for the application of the principle for which the counsel contends. The *State v. John*.<sup>(e)</sup> The case of *Preble v. State*,<sup>(f)</sup> is an important case on this point. The defendant was indicted for murder. At the time of the commission of the offence he was intoxicated from the use of ardent spirits. "And in relation thereto the Judges charged the jury, that the fact of such drunkenness could not be taken into consideration by them, unless the defendant was so far gone as not to be conscious of what he was doing, and did not know right from wrong." "Out of this charge," said Turley, J., "arises the point to be considered by the Court in this case, and that is, how far drunkenness in law is a mitigation or excuse for the commission of offences. This is no new question, presented for the first time for consideration, but one of the earliest consideration in the law of offences; one which has been again and again adjudicated by the Courts of Great Britain and the United States, and, as we apprehend, with a consistent uniformity rarely to be met with in questions of a like interest and importance. Upon the subject we have nothing to discover; no new principle to lay down; no philosophical investigation to enter into, in relation to mental sanity or insanity; but only to ascertain how the law upon this subject has been heretofore adjudged, and so to adjudge it ourselves."

"In the case of *Cornwall v. The State of Tennessee*,<sup>(g)</sup> the able Judge who delivered the opinion of the Court, in speaking upon this subject, uses the following very emphatic language:

"A contrary doctrine ought to be forced out of circulation, if it has obtained it, by every friend to virtue, peace, quietness and good government. All civilized governments must punish the culprit who relies on so untenable a defence; and in doing so, they preach a louder lesson of morality to all those who are addicted to intoxication, and to parents and guardians, and to youth and to society, than comes in the cold abstract from pulpits. To the justice and correctness of these remarks, all who have had experience in the annals of crime can bear testimony.

(b) 7 C. & P. 297.  
(c) 8 Jud. 330.

(c) Ibid. 817. 1 Russell on Crimes, 8.  
(f) 9 Hump. 663, A. D. 1849.

(d) 7 C. & P. 145.  
(g) Mar. & Ser. 147, 149

It is only at the present term of the Court that we have seen it proven that an offender, a short time before the perpetration of a horrid murder, inquired of a grocery-keeper what kind of liquor would make him drunk soonest, and swallowed thereon a bumper of brandy. We have had three cases of murder, and one of an assault with an intent to murder, before us at this term of Court, in every one of which these are convictions in the Circuit Court and affirmances in this; every one of which is of aggravated character, and in every one of which the perpetrator, at the time of the commission of the offence, was laboring under *dementia affectata*, drunkenness; an awful illustration of the necessity of holding to the law as it has been adjudged upon this subject. There is, in our judgment, no conflict of authority upon this point of law; every case which may have such appearance, being a case of exception, on the application of the rule, or a case of no authority upon the subject. Lord Hale, in his work before referred to, (*h*) says: "If, by means of drunkenness, an habitual or fixed madness be caused, that will be excuse, though it be contracted by the vice and will of the party; for this habitual or fixed phrensy puts a man in the same condition as if it were contracted at first involuntarily. And it was to this principle the Circuit Judge was alluding, when he charged the jury in the present case, that the drunkenness of the prisoner could not be taken by them into consideration, unless he were so far gone as to be unconscious of what he was doing, and did not know right from wrong, in saying which he put the case most favorable for the prisoner; for a man may be so intoxicated as to be unconscious of what he is doing, and not to know right from wrong; and yet not have contracted an habitual and fixed phrensy, the result of intemperance, of which Lord Hale is speaking above."

§ 93. In *Kelly v. State*, (*i*) the same question came before the High Court of Error and Appeals of Mississippi. The court below declined to charge the jury that intoxication was evidence of intention in determining whether the killing was murder. The prisoner was convicted of manslaughter only, but the court above in remarking upon this question, lays down the law as well established, that drunkenness is no excuse for crime, although sometimes held proper for consideration, where the sole question is whether the act done was premeditated or done only with sudden heat or impulse, which might be as truly said of anger or any other excitement arising from sudden provocation or peculiar circumstances; but not much importance was to be attached to it, as might be conceived from the presumption which was equally great that the design might have previously existed, and intoxication have been employed to nerve the criminal to the commission of the crime: that the law discriminates between the delusion of intoxication and the insanity which it may ultimately produce. If drunkenness, they said, were to be considered an excuse for crime, there would be established a complete emancipation from criminal justice.

The same principle was recognized in this country in *State v. M'Cante*, (*j*) being somewhat differently applied. The court here held "That if a crime was committed upon a provocation, which, if acted upon instantly

(*h*) P. C. pt. 1, ch. 4. See *ante*, § 67.

(*i*) 3 Smedes & Marshall, 518, A. D. 1844.

(*j*) 1 Spears, 384.

by a sober man would mitigate his offence, evidence of intoxication was admissible upon the question whether such provocation was, in fact, acted upon when the act was done. If a man uses a stick upon you, you would not infer a malicious intent so strongly against him if drunk, when he made an intemperate use of it, as you would if he had used a different kind of weapon. But where a dangerous instrument is used, which if used must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."

In a late case in Tennessee, already cited, (*k*) it was said by Turley, J., "The case of *R. v. Grindley*, decided at Worcester Sum. Ass., 1819, by Holroyd, J., not reported but referred to by Russell in his work upon Crimes, page 8, and now insisted upon by the prisoner as putting the Circuit Judge in the wrong in his charge to the jury, and holding different principles upon this subject, is expressly overruled by Park and Littledale, judges, in the case of *R. v. Carroll*, (*l*) and if it were not, it is an anomalous case; and perhaps was not intended or considered by Holroyd to be in conflict with principles so well and so long settled. The case as stated by Russell, holds that 'though voluntary drunkenness cannot excuse from the commission of crime, yet when upon a charge of murder the material question is whether an act was premeditated or done only with sudden heat and impulse, the fact of the party being intoxicated is a circumstance proper to be taken into consideration.' Now, in relation to this principle as thus laid down, it may be observed that cases may arise, even of murder at common law, in which it would be proper to receive such proof as explanatory of intention. To constitute murder at common law, the killing must have been done with malice aforethought; the existence of this malice necessarily implies the absence of all circumstances of justification, excuse or mitigation arising from adequate provocation; and this malice is either express or implied: express, when it has been perpetrated by poison, lying in wait, or other deliberate and premeditated manner; implied, from the nature of the weapon, the violence of the assault, and the inadequacy of the provocation. It may become important in a case to know whether poison which has been imbibed was administered knowingly and designedly or accidentally. And if it be wilful, which it is in the case of a medicine, there being two on the table, one a poison and the other not, and the poison be administered, is not the fact that the person who administered it, was drunk at the time, legitimate proof for the purpose of showing that it was a mistake which a drunken man might make, though a sober one would not. This would be, not to protect him from the punishment for his crime, but to show that he had not given the poison premeditatedly, and therefore was guilty of no crime. So if the question be, whether the killing is murder or manslaughter, the defence being adequate provocation, and it be doubtful whether the blow be struck upon the provocation or upon an old grudge, it seems to us, proof that the prisoner was drunk when he struck the blow is legitimate, not to mitigate the offence but in explanation of the intent, that is, whether the blow was struck upon the provocation or upon the old grudge; for the law only mitigates the offence to manslaughter, upon adequate pro-

(*k*) *Pirtle v. State*, 9 Hamp. 663.

(*l*) 7 C. & P. 145.



vocation, out of compassion to human frailty; and, therefore, though there be adequate cause for such mitigation, yet if, in point of fact, one avail himself of it to appease an old grudge, it is murder and not manslaughter; and in all such cases the question necessarily is, whether the blow was stricken premeditatedly, or upon sudden heat and impulse produced by the provocation, and the fact of the self-possession of the perpetrator of the crime is very material in a conflict of proof upon the subject. If this be the extent of the opinion of Holroyd, in the case of *Rex v. Grindley*, we are not prepared to hold that it is not law. But if it be understood to hold that a killing may be mitigated from murder to manslaughter in consequence of the drunkenness of the perpetrator, thereby making that adequate provocation in the case of a drunken man which could not be so in the case of a sober one, we are prepared to hold with Park and Littledale, that it is not law."

## CHAPTER II.

### MENTAL UNSOUNDNESS CONSIDERED PSYCHOLOGICALLY.

§ 74. "THE various diseases included in the general term insanity, or mental derangement," says Dr. Ray, "may be conveniently arranged under two divisions, founded on two very different conditions of the brain; the first being a want of its ordinary development, and the second, some lesion of its structure subsequent to its development. In the former of these divisions, we have Idiocy and Imbecility, differing from each other only in degree. The various affections embraced in the latter general division may be arranged under two subdivisions, Mania and Dementia, distinguished by the contrast they present in the energy and tone of the mental manifestations. Mania is characterized by unnatural exaltation or depression of the faculties, and may be confined to the intellectual or to the affective powers, or it may involve them both, and these powers may be generally or partially deranged. Dementia depends on a more or less complete enfeeblement of the faculties, and may be consecutive to injury of the brain, to mania, or to some other disease; or it may be connected with the decay of old age. These divisions will be more conveniently exhibited in the following tabular view:

Defective development of the faculties.	{ IDIOCY. IMBECILITY.	1. Resulting from congenital defect.
		2. Resulting from an obstacle to the development of the faculties, supervening in infancy.
INSANITY.	{ MANIA. DEMENTIA.	INTELLECTUAL, { 1. General. 2. Partial.
		AFFECTIVE, { 1. General. 2. Partial.
Lesion of the faculties subsequent to their development.		1. Consecutive to mania, or injuries of the brain. 2. Senile peculiar to old age." <sup>(a)</sup>

(a) Ray on Insanity, 71.

§ 75. The following classification of Flemming,<sup>(b)</sup> while less simple, is very valuable both for the delicate precision of its analysis, and for the important aid it affords to the nomenclature of forensic psychology:

I. INFIRMITAS. (Geistesschwäche.) Imbecility, the characteristic being the diminution in psychical power.

1st. As to origin.

(1.) *Primaria seu congenita*, (Syn. *Idiotismus*.) A defective development perceptible either at birth or infancy.

(2.) *e morbo*, arising from wounds on the head, brain or nervous fevers, or epilepsy.

(3.) *Senilis*, arising from decrease in vitality in the extreme stages of old age.

2d. As to extent.

(1.) *Infirmitas adstricta*. Limited imbecility, the characteristic being diminution of particular organic powers.

(a) *Dysmenia*. Weakness of memory, the characteristic being the feebleness of the reproductive power of the perceptive faculty, and the symptoms, an inability to remember things either recent or remote, distinctly or at all.

(b) *Infirmitas adstricta surdo-mutorum*. Imbecility of the deaf and dumb.

(c) *Infirmitas adstricta eecorum*. Imbecility of the blind.

(2.) *Infirmitas sparsa*. General weakness of mind, the characteristic being the absolute or relative weakness of all the mental and moral functions, and the symptoms, obtuseness and feebleness of the perceptive and attentive powers; feebleness of comprehension, of ratiocination, of imagination, of memory, in a variety of gradations.

II. VESANIA, (Geistes verwirrung.) Mental confusion, the characteristic being a depravity (depravation) of the psychical powers arising from excess or perversion.

1st. *Vesania dysthymodes*, or *dysthymia*, disorder of temperament, the characteristic being the depravity (depravation) of the psychical powers connected with an overpowering disturbance of the temperament. Symptoms; an anomalous condition of the sensibility, the mental tone, the inclinations, and the impulses. The consequent deliria are the invariable effect of the dysthymia, and depend upon the prevailing feeling or sentiment.

(1.) *Dysthymia transitoria seu subita*. Sudden dysthymia, the characteristic being the suddenness and rapidity of its approach. Symptoms; irritability, proneness to agitation, irascibility, excessive disgust, fear of death, extreme timidity, despair of happiness. It occurs frequently in the *Stadium prodromorum* of cerebral affections and nervous fevers, or of epilepsy and the cognate complaints; and is sometimes, though more rarely, accompanied by the sudden suicidal impulse. It should be observed that *dysthymia remittens* sinks in the remission into the mere *dysaesthesia*.

(2.) *Dysthymia adstricta*, or partial dysthymia, the characteristic being an anomalous condition of particular states of feeling, inclinations, and impulses.

(a) *Atra*, (the *Melancholia Lypemonia*, of Esquirol,) or gloomy *Dysthymia*, the characteristic being sadness, fear, dread, suspicion, malevolence, homesickness, (*nostalgia*), and the wildness and ferocity of the intoxicated. (*Ferocitas et morositas ebriosorum*.)

(b) *Dysthymia candida*, cheerful *Dysthymia*, (*Melancholia hilaris*, *Choromanie Chambeyron*), the characteristics being hilarity, recklessness of manner, raillery, proneness to see all things in the most vivacious light.

(c) *Dysthymia mutabilis*, variable *Dysthymia*, the characteristic being vacillation between the two foregoing forms.

(3.) *Dysthymia sparsa*, (*apathica*), general *Dysthymia*, (*Melancholia Attornita*.) The characteristics being, apparent obtuseness, dull, heavy reveries and abstractions, prevalence of an indistinct sensation of discomfort, apathy to all extraneous impressions.

2d. *Vesania Annoetos*, or *Anoesia*. Disturbance of the understanding. The characteristics being the depravity (depravation) of the psychical powers, with a controlling anomalousness of the intellectual faculties. Symptoms, deliria of various kinds, with manifestations of *Dysthymia*, which, however, are merely subordinate.

(1.) *Anoesia Transitoria*, or *Subita*. Sudden *Anoesia*. The characteristics being unexpected appearance and rapid subsidence.

(b) *Psychiatrisches Journal*, Bd. I. Hft. 1. p. 112.

- (a) *Anoesia e febre*. Febrile delirium.  
 (b) *Anoesia e potu nimio, (ebrietas)*. Drunkenness.  
 (c) *Anoesia ex affectu*, madness caused by agitation of mind.  
 (d) *Anoesia semisomnis*. Confusion of mind in sleep. Sleep-drunkenness.  
 (e) *Anoesia Somnambula, or Spastica*; Somnambulism.
- (2.) *Anoesia continua, chronica Anoesia*.  
 (3.) *Anoesia remittens*. Remittent Anoesia.  
 (4.) *Anoesia adstricta*, partial Anoesia or Lunacy. The characteristics being delirium in particular intellectual departments.  
 (a) *Anoesia ad sensationes*. Hallucinations, (deliria of the senses,) (Var. a *fallacia sensuum et hallucinatio ebriosorum*, derangement of the senses consequent on excess of drinking.)  
 (b) *Anoesia ad cogitationes*, eccentricity, fixed insane ideas.  
 (5.) *Anoesia sparsa*. General Anoesia or lunacy, the characteristics being Deliria in every department of the intellectual faculties. Var. a *Anoesia potatorum, (Delirium tremens)*.
- 3d. *Vesania mania seu Mania*. The characteristic being a depravity (depravation) of the psychological functions, with a concurrent anomalousness of the emotional and intellectual faculties. The symptoms are a violent and perverse temper, inclinations and impulses, with violent deliria, which mutually sustain and aggravate each other.
- (1.) *Mania transitoria subita*, sudden mania, the characteristics being a sudden breaking out of mania without perceptible premonitory stages, and without previous *Dysthymia* or *Anoesia*; generally a crisis in sleep, or transition to the second class.  
 (a) *Mania subita a febre, (Delirium encephaliticum)*, sudden delirium, with feverish symptoms of the brain and nerves.  
 (b) *Mania subita a potu nimio*, arising from and during intoxication.  
 (c) *Mania subita ex affectu*, mania caused by excessive agitation of the affections.  
 (d) *Mania subita e partu*, mania connected with parturition.  
 (e) *Mania subita e morbo occulto, (vulgo) Amentia occulta*, which also includes the previous species.
- (2.) *Mania continua*, permanent mania.  
 (3.) *Mania remittens*, Remittent mania. (Remark—Remittent mania in remission turns into Anoesia, in some cases immediately into *Dysthymia*.)  
 (4.) *Mania adstricta seu instinctiva*. Moral Insanity. (*Mania sine delirio* of Pinel; *Monomaniæ instinctivæ* of Mare; *Mania affectiva*; *Folie raisonnée*); the characteristics being insanity, apparently confined to specific morbid impulses. This class is almost always connected with the symptoms of *Mania transitoria seu subita*.  
 (5.) *Mania Sparsa*, general mania is the characteristics being a depravity (depravation) of both the moral and intellectual powers.

§ 76. To Ellinger(e) we are indebted for the following :

- I. Diseases of the affections, when the affections, sentiments and desires are preponderantly alienated, while the intellectual faculties are affected in an inferior or at least a secondary degree.  
 (a) Melancholy, the prevalent type being sadness, depression, fear, dread and despair.  
 (b) Phrensy, the prevalent type being mirth, mischievousness, anger.  
 (c) Volatility, (Launenhaftigkeit.) Alternation between the two last mentioned phases.
- II. Delirium, the sentiments and intellectual faculties are equally affected, and both the subjective and objective relations alike distorted.  
 (a) (b) (c) Characterized by melancholy, phrensy, and the alternation of the two.
- III. Diseases of the intellect, where the affections take a subordinate part and the intellect is mainly disordered.  
 (a) Partial.  
 (b) General.  
 (c) Debility, including idiocy and imbecility.

§ 77. Without attempting a formal analysis, it is now proposed to consider the several points in which Psychology comes in contact with the law of the land, in the following order:—

(c) Ueber die antropologischen Momente der Zurechnungs fähigkeit. Ludwigsburg, 1846.

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     (c) Delirium tremens, § 238.  
     (d) Puerperal mania, § 239.  
 2d. PARTIAL DELIRIUM, § 240.

X. MENTAL UNSOUNDNESS, AS CONNECTED WITH DELUSIONS AND HALLUCINATIONS, § 241.

- 1st. GENERAL, § 241.  
     Marked by general derangement of the perceptive faculties, § 241.  
     Various phases it assumes, § 242.  
     Tests of Ellinger, § 243.  
     Effect of general delusion, § 244.  
 2d. PARTIAL, § 245.  
     Delusions and hallucinations, § 245.  
     When there is no other sign of mental unsoundness, § 246.  
     When mental unsoundness has made some progress, § 247.  
     In cases of drunkenness, &c., § 248.  
     In cases of developed insanity, § 249.  
     Causes of delusions, § 250.  
     Abercrombie's classification, § 252.  
     Hallucination in regard to a change into, or a possession by, wild animals, § 253.

XI. MENTAL UNSOUNDNESS, AS CONNECTED WITH LUCID INTERVALS, § 254.

XII. TREATMENT OF INSANE CRIMINALS, § 259.

- Necessity of separate places of confinement in which insane criminals can be placed, § 259.
- (1.) FOR RETRIBUTION, § 260.  
     In most, if not all, cases of crime resulting from insane impulse, there is original responsibility, § 260.  
     Insanity, in most cases, the result of moral excess, § 261-9.  
     Qualified responsibility of lunatics, § 261-9.
  - (2.) FOR PREVENTION, § 270.  
     Mischief to society if monomaniacs are suffered to go at large, § 270.  
     Necessity of restraint, § 271.
  - (3.) FOR EXAMPLE, § 272.  
     Contagiousness of unchecked crime, § 272.
  - (4.) FOR REFORM, § 273.  
     Impossibility of patient recovering when permitted to run at large, § 273.

Injury to the community from the want of secondary punishments, the result being acquittals of dangerous parties, from an unwillingness to see the severer penalties inflicted, § 274.  
 Ordinary penitentiaries inadequate, § 275.  
 And so of ordinary lunatic asylums, § 276.

## I. GENERAL THEORIES OF MENTAL UNSOUNDNESS.

§ 78. To those who have examined that portion of the preceding pages, which treats of the legal relations of mental unsoundness, it will be obvious that no hypothesis can be constructed which will meet with exactness every possible future case. No general definition has therefore been attempted, and it is sufficient at present briefly to notice the three prominent hypotheses by which the *cause*, rather than the *nature*, of mental unsoundness has endeavored to be explained.

§ 79. 1st. *The psychological theory.* This is based on the assumption that the primitive source of these diseases is in the soul itself, and that the soul is that which originally suffers, and imparts, when there is sympathetic insanity, its malady to the body.(d)

§ 80. 2d. *The somatic theory* takes for granted that the soul itself, as such, is incapable of originating a disease, but that the occasion of every affection of the mind is to be found in some abnormality of bodily development, and that aberrations of mind are nothing more than disturbances of some functions of the soul, produced by bodily abnormalities. This theory resolves itself into various subdivisions. One party assumes, that while every mental disease is to be deduced from bodily causes, it is still to be treated as a self-existent disease; while others maintain that there can be no such thing as a diseased state of the mind, and that what we usually designate as such, is nothing more than a symptom of some bodily disorder.(e)

§ 81. 3d. *The intermediate theory* attributes to the body and the soul alike originative influence, in the growth of mental diseases.(f)

(d) See an exposition of this in Dr. Henry Monro's "Remarks on Insanity, its Nature and Treatment." London, 1850.

(e) A very ingenious though unsound defence of the Somatic Theory will be found in Mr. M. B. Sampson's "Criminal Jurisprudence considered in relation to Cerebral Organization." London, 1843. Hobbes' famous theory drifts in the same direction. The result of this would be to make all restraint an injustice.

(f) See a very capable sketch of these theories in Schürmayer, *Gerichtliche Medicin*, § 521, from which this analysis is taken, and see also particularly Dr. Rush's examination of the same points in his treatise on the Mind, pp. 12, 13, 14, and where that eminent authority (p. 16) localizes madness in the blood vessels of the brain.

Feuchtersleben, in his celebrated work, (*Principles of Medical Psychology*, translated by Evans Lloyd, printed by the Sydenham Society, London, 1847,) may be considered as adopting the intermediate theory. Insanity, he tells us, is not either a bodily or a mental disease, being a disturbed reciprocal relation of mind and body. Dr. Jamieson (*Lectures on the Med. Jur. of Insanity*, by Robert Jamieson, M. D.) takes this same view.

Sir Benjamin Brodie in a late very interesting essay, (*Psychological Inquiries, &c.* London, 1854,) gives the following conclusive objections to the phrenological phase of the somatic theory:—"Now there are two simple anatomical facts which the founders of this system have overlooked, or with which they were probably unacquainted, and which of themselves afford a sufficient contradiction of it.

"1st. They refer the mere animal propensities, chiefly to the posterior lobes, and the intellectual faculties to the anterior lobes of the cerebrum. But the truth is, that the posterior lobes exist only in the human brain, and in that of some of the tribes

§ 82. Independently of the pathological difficulties in the way of the somatic theory, psychological research testifies most strongly against it. (*g*) The mental and moral functions are the immediate products of an independent sphere of organism, and not to be explained by anything lying outside of that sphere. The brain and the nerves have only the physical part of perception and motion, and to some extent the regulation of the functions to perform; but the soul cannot otherwise be considered as entirely distinct from this activity of the nerves. The somatic theory, which confounds the two, will never be able to make a satisfactory distinction between palsy and imbecility, between convulsions and ravings, between sensuous hallucinations and insanity. (*h*) The somatic theory fails entirely in affording support to any practical system of therapeutics. The general experience of modern times confirms the fact, that medicines are of very little avail against mental derangements, and that the most essential results are attained by a strictly moral treatment, and corresponding regulation of diet and habits. (*i*)

of monkeys, and are absolutely wanting in quadrupeds. Of this there is no more doubt than there is of any other of the best established facts in anatomy; so that, if phrenology be true, the marked distinction between man on one hand, and a cat, or a horse, or a sheep on the other, ought to be, that the former has the animal propensities developed to their fullest extent, and that these are deficient in the latter.

"2ndly. Birds have various propensities and faculties in common with us, and in the writings of phrenologists many of their illustrations are derived from this class of vertebral animals. But the structure of the bird's brain is essentially different, not only from that of the human brain, but from that of the brain of all mammalia. In order that I may make this plain, you must excuse me if I repeat what I said on the subject formerly. In the mammalia the name of the *corpus striatum* has been given to each of two organs of a small size compared with that of the entire brain, distinguished by a peculiar disposition of the gray and the fibrous or medullary substance of which they are composed, and placed under the entire mass of the hemispheres of the cerebrum. In the bird's brain what appears to a superficial observer to correspond to these hemispheres is found on a more minute examination, to be apparently the *corpora striata* developed to an enormous size; that which really corresponds to the cerebral hemispheres being merely a thin layer expanded over their upper surface, and presenting no appearance of convolutions. It is plain then, that there can be no phrenological organs in the bird's brain, corresponding to those which are said to exist in the human brain, or in that of other mammalia. Yet birds are as pugnacious and destructive, as much attached to the localities in which they reside, as any individual among us."

In his interesting work on Criminal Jurisprudence, Mr. Sampson adopts the views of the author of the "Vestiges of the Natural History of Creation," and ascribes every criminal action to some abnormal or morbid condition of the cerebral organization. This fundamental proposition is, that "every manifestation of the mind depends upon the confirmation and health of its material instrument, the brain; and as it is not the function of a sound and healthy brain to give rise to any other than healthy manifestations, so no error of judgment can ever arise, but as the result of a defective condition of that organ."

Mr. Hurlbut, an eminent counsellor, and one of the Supreme Judges in the State of New York, in his "Essays on Human Rights and Political Guarantees," a work which is well worthy of perusal, promulgates the same doctrine, which on the other hand is very ably controverted by Dr. Hoods.—"Suggestions for the further provision of Criminal Lunatics, by Charles Hood, M. D. London, 1854. pp. 126, 127."

(*g*) Siebold. Lehrbuch der Gericht. Med. Berlin, 1847. § 194. L. Kraher, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851. § 126. Heinroth, Syst. der psychisch gericht. Med. Leipsic, 1825. Kant, Anthropologie, Königsb., 1798. Metzger's Ger. Med.—Abhandl. Königsb. 1803.

(*h*) Leçons Cliniques, sur l'Aliénation Mentale—par Falret. Leçon 1, p. 8. Paris, 1854.

(*i*) The most thorough of the German advocates of the somatic theory is Friedreich, particularly in his "Historisch, Kritische Darstellung de Theorien neber das Wesen und den Sitz der psychischen Krankheiten. Leipsic, 1836.



§ 83. The psychological theory, at its first inception, split upon the rock of extremes, in denying the influence of the physical processes upon mental diseases in the face of experience. In opposition to the somatists it was thought necessary to exclude all natural causes from the explanation of the origin of mental affections, and to ascribe them to an act of voluntary self-enthralment, which, in all cases, was to be attributed to some prior moral excess or delinquency incurred, with a knowledge of the consequences. But a derangement of mind is not identical with sin. For though every vice, every sin, is an abnormality of the soul, yet every abnormality of the soul is not sin. A lunatic may be in a human sense innocent of positive guilt, and on the other hand the worst of criminals may retain his sanity. It is impossible to adhere to this doctrine in practice, without reducing the entire treatment of the disease to a system of rewards and punishments; and the vagueness of the idea of freedom and constraint, the impossibility of distinguishing between the moral thralldom of the criminal and that of the sick man, will throw into confusion the entire system of forensic psychology.<sup>(j)</sup> It is equally amiss to derive all diseases of the mind from the passions, although the latter may be important causes, and in the more advanced stages, symptoms of insanity.<sup>(k)</sup> At the same time, as will hereafter be very fully shown,<sup>(kk)</sup> there is in the mass of cases of insane convicts such an amount of responsibility as to require the infliction of a degree of punishment which, though different from that imposed on the sane, will yet be accompanied with a corrective as well as a preventive discipline.

§ 83. The truths contained in these opposing views and theories, could not fail to be appreciated and to lead to efforts at reconciliation. The unity of man's being was particularly looked to as a resolution of the discord. The theories constructed on such a basis must of course depend upon the light in which this unity of man is regarded. The most eminent European authorities now tend to the conclusion that mental unsoundness is a disease of the soul itself, but has its seat, not in the soul's intellectual but in its grosser spheres.<sup>(l)</sup> And inasmuch—according to this theory—as this lower sphere of the soul has the character of thralldom, of a want of self-control, mental affections are frequently termed “involuntary aberrations.”<sup>(m)</sup>

“The degree in which the operations of the mind are dependent upon its material instruments,” (says Dr. Carpenter,) “is a question which cannot be regarded as conclusively determined by scientific evidence alone, and it has little practical bearing on physiological research.

(j) *Etudes Médico Psychologiques*. M. Renaudin, p. 166. Art. 30. Sur la responsabilité Morale. Paris, 1854.

*Leçons Cliniques*, de M. Falret, p. 11, discours d'ouverture. Paris, 1854.

*Manuel Complet de Médecine Legale* per J. Briand. Section Troisième. Article III. p. 560. Paris, 1852.

(k) Heinroth is the leading representative of the psychological theory. See his “*Lehrbuch der Seelenkrankheiten*.” Leipsic, 1818, and his “*System der psychisch, gerichtlichen Medicin*,” Leipsic, 1825. Dr. Mayo, in his “*Medical Testimony on Lunacy*,” goes some distance in the same direction; and as has been seen, very justly argues in favor of a discrimination of punishment between the malicious and the unconscious insane criminal. Mayo, &c. 50, 51.

(kk) Post § 259–276.

(l) See Schürmayer, *Gerichtliche Medicin*. § 521.

(m) “*Unfreiwilliger Irrsein*.” Schürmayer.

The doctrine usually regarded as having the best Scriptural basis—that the mind has an existence altogether distinct from that of the body—is attended with several difficulties, of which those arising from the phenomena of insanity are perhaps the most important. On the other hand, the opinion held by some, that mental phenomena are the mere results of material changes, appears to involve difficulties at least equal: among which may be noticed, the consciousness of personal identity, preserved throughout the continual and rapid changes to which the nervous system is subject. The assertion, however, that psychical operations *cannot* be the result of material changes, is based on the assumption, that we know far more of the essential character of both than is admitted by the best metaphysicians to be the case regarding either; this is a question which scarcely comes within the boundaries of human knowledge. Neither hypothesis is inconsistent with the revealed doctrines of the immortality of the soul; though the second could not be made to conform to it, without the additional supposition that some refined form of matter, on which the psychical operations essentially depend, has also an external existence. All the upholders of this doctrine seek a confirmation of it in the expression ‘spiritual body,’ used by an authority which is all but supreme. The certainty of a future existence, in which all that is corruptible shall be done away, is the great practical fact for the Christian. On the mode of it the philosopher may speculate, and even though he may come to the conclusion that ‘mind and matter are logically distinct existences,’ yet he finds their operations so inextricably interwoven in the phenomena of man’s terrestrial life, that he cannot pursue either class by itself alone.”

To this may be added the very high authority of Isaac Taylor, who, in his “Physical Theory of another Life,” after pointing out how completely the question whether the human soul is ever actually or entirely separated from matter, is passed over by St. Paul as an inquiry altogether irrelevant to religion, continues:—“Let it then be distinctly kept in view, that although the essential independence of mind and matter, or the abstract possibility of the former existing apart from corporeal life, may well be considered as tacitly implied in the Christian’s scheme, yet that an actual incorporeal state of the human soul, at any period of its course, is not involved in the principles of our faith any more than is explicitly asserted. This doctrine, concerning what is called the immortality of the soul, should ever be treated simply as a philosophical speculation, and as *unimportant* to our Christian profession.”(n)

§ 84. “Such,” says President Edwards, the first metaphysician of his country, and perhaps the first of his age, “seems to be our nature, and such the laws of the union of soul and body, that there never is, in any case whatsoever, any lively and vigorous exercise of the will or inclination of the soul without some effect upon the body in some alteration of the motion of its fluids, and especially of the animal spirits. And, on the other hand, from the same laws of the union of the soul and body, the constitution of the body and the motion of its fluids may promote the exercise of the affections, but the mind only that is the proper seat of

(n) Carpenter. Mind and Matter, by J. G. Millingen, M. D., M. A. pp. 128, 129, 130.

affections. The body of man is no more capable of being really the subject of love or hatred, joy or sorrow, fear or hope, than the body of a tree,—or than the body of a man is capable of thinking and understanding. As it is the soul only that has ideas, so it is the soul only that is pleased or displeased with its ideas. As it is the soul only that thinks, so it is the soul only that loves or hates, rejoices or is grieved at what it thinks of. Nor are these motions of the animal spirits and fluids of the body anything properly belonging to the nature of the affections, though they always accompany them in the present state, but are only effects or concomitants of the affections that are entirely distinct from the affections themselves, and not essential to them; so that an unbodied spirit may be as capable of love and hatred, joy or sorrow, hope or fear, or other affections, as one is that is united to a body.”(o)

§ 85. There can also be little doubt that the soul, in this sense, acts directly on the body, either with or without the usual muscular or nervous action. A curious case, recorded by the late Dr. J. Cheyne, seems to favor the opinion that there may be a set of fibres conveying to the brain a sense of general sensation, independent of the sense of touch. “We know an instance,” says he, “of a remarkable delusion, arising from complete loss of feeling in the left side of the body, caused by an attack of palsy, which first originated, and then fatally terminated in apoplexy. In the morning the individual maintained he had two left arms; and when we tried to convince him that he was under a misconception, he promptly offered to produce the supplementary arm. ‘There it is,’ said he, patting his left shoulder with his right hand. ‘Well, then,’ it was asked, ‘where is the other?’ On which, turning round his head with great alacrity to show it, he seemed much disappointed when he could discover but one arm, vehemently declaring that ‘there were two in the night.’(p) Here there must have been general sensation in the arm, or the patient would not have felt that he had an arm at all; but when in the night he felt but could not see that he had an arm, and, on touching the surface of the palsied limb with the other hand, was sensible of no impression, he naturally supposed the real arm to be existing behind or beside the dead substance which he touched. Between sleeping and waking, even in health, we do not always reason; and here, probably, the reasoning power was somewhat disturbed by the lesion of the brain. If there should be a sense of this kind, it would account for the fact that *pain* is felt in palsied limbs which are insensible to touch, as well as for those cases of insanity or idiocy where the sense of touch remains, but that of heat, or the pain ensuing from a burn is lost.(q)

## II. HOW MENTAL UNSOUNDNESS IS TO BE DETECTED.

1st. *By whom.* § 86.

2d. *At what Time.* § 96.

(o) Edwards on Religious Affections, p. 15.

(p) Cheyne's Essays, p. 60.

(q) Barlow on Man's Power over himself to prevent or control Insanity. London, W. Pickering, 1843; Phil. Lea & Blanchard, 1846.

- (1) Time of act. § 95.
- (2) At trial. § 97.
- (3) At and after sentence. § 98.
- 3d. *By what Tests.* § 100.
  - (1) Physiognomy. § 100.
  - (2) Bodily health and temperament. § 102.
  - (3) Hereditary tendency. § 107.
  - (4) Conversation and deportment. § 110.
  - (5) Nature of act. § 112.
    - (a) Its insensibility. § 112.
    - (b) Its incongruity with antecedents. § 113.
    - (c) Its motivelessness. § 114.
    - (d) Its inconsequentiality. § 115.

1st. *By whom.*

§ 86. It has already been stated that the experience of medical experts, like that of experts in all other branches of science,<sup>(r)</sup> is part of the common law of the land. The illustrations of this principle are very numerous. Thus, if a question involving ship-building is the subject of judicial investigations, the testimony of a shipwright as to the meaning of terms of art, as well as to the general laws of the craft, enters into the basis upon which the case is tried. And if there has been any difficulty in the reception of the result of medical experience, when insanity is at issue, it has arisen from that occasional conflict of opinion among medical witnesses which the highest professional authority have lately so entirely united in deploring.<sup>(s)</sup>

§ 87. One or two illustrations will be sufficient to show the importance of a skillful medical examination. "Delusions are sometimes cunningly concealed for a length of time," says Dr. Winslow, "and, notwithstanding we are certain that they exist, no amount of ingenuity will induce the patient to disclose them, particularly if made aware of the object of our visit.<sup>(t)</sup> I had been, recently, to see a lady whose insanity was manifested in a remarkable degree in her every action; but after paying her several visits I found it impossible to induce her to exhibit any one delusive impression or insane idea; but no sooner had I left the room, than her conversation and conduct became outrageously insane. Many insane persons are able to talk with apparent rationality, but cannot write without exhibiting their insanity. I have

(r) "C'est aux lumières et à la probité des médecins que doit être exclusivement réservé le droit de juger chaque espèce de aliénation mentale, et de donner aux tribunaux les seuls éléments sur lesquels puissent être raisonnablement fondés des jugemens équitables."—*Méd. Lég.*, M. Orfila, tome 1, p. 360. Paris, 1848.

(s) *Lettsomian Lectures on Insanity.* By Forbes Winslow, M. D., D. C. L., late President of Medical Society of London, &c. London. John Churchill, New Burlington Street. *Medical Testimony and Evidence in cases of Lunacy.* Being the Croonian Lectures delivered before the Royal College of Physicians in 1853. With an Essay on the conditions of mental soundness. By Thomas Mayo, M. D., F. R. S. London, John W. Parker & Son, West Strand. 1854. Mare, *Die Geisteskrankheiten, in Beziehung auf die Rechts pflege* I. p. 8; and see also particularly Mittermaier's late very interesting essay, "Die Stellung und Wirksamkeit der Sachverständigen in Strafverfahren," in "Archiv für Preussisches Strafrecht." Berlin, 1853.

(t) —"Souvent même il faut toute l'expérience des hommes qui ont fait une étude particulière des aberrations mentales pour constater l'existence de la folie."—*Manuel de Médecine Légale*, par J. Briand, p. 542. Paris, 1852.

examined, recently, one very remarkable case of this kind, in a clever, well-read, and intellectual woman, whom I had occasionally to visit. (*u*) I never could detect the slightest aberration of mind in her conversation, and yet almost invariably upon my leaving, she placed in my hands a letter (which had been written previous to my calling), full of the most absurd extravagances and fancies: accusing strangers, myself, and members of her family of being engaged in deeply concocted conspiracy against her property and life. Several of these peculiar and interesting cases are recorded, and the medical man has been advised, with the view of obtaining an insight into the true condition of the mind, to open a correspondence with the supposed lunatic, upon the principle that few persons positively insane can, for any length of time, write without exhibiting their delusions, whatever amount of self-control they are able to exercise over their thoughts and morbid ideas, during protracted conversations. It is essential for us to ascertain the degree of knowledge possessed of the ordinary and every-day occurrences of life. Upon one occasion I was conversing with a person whose state of mind was the subject of my investigation, and finding him rational and apparently sane upon all points, I questioned him as to who was the reigning sovereign, without knowing he had any delusion on the point. The person immediately started from his chair, exclaiming, in an excited tone of voice, "I am the sovereign!" (*v*)

§ 88. "I was requested," says the same high authority, "to see a gentleman who was said to be suicidally insane. Upon inquiry, I ascertained from good authority that under the influence of most distressing hallucinations he had attempted to hang himself. The patient firmly, earnestly, and apparently with great truthfulness, resolutely and repeatedly denied the fact. He declared it was an invention,—a pure creation of the imagination, originating with the family; that he was happy, subject to no depression, had a strong wish to live, and great fear of death. I examined him, in conjunction with another physician, and neither of us could seize hold of the salient point, or satisfy himself that the man was actually insane. But, we asked ourselves, what motive could his family have for thus misrepresenting the facts of the case? We felt quite assured, from the character of the evidence presented, that an attempt at suicide had been made; but the patient, with an ingenuity which would have reflected credit upon a *nisi prius* lawyer, parried with great skill all the questions, and gave such prompt and happy replies to our anxious interrogatories, that we were compelled to admit ourselves, for a time, perfectly defeated. By a course of conversation I drew the gentlemen's thoughts into a different channel; and whilst my attention was directed apparently elsewhere, I kept a close watch upon all his movements. I perceived, as I imagined, some kind of instrument projecting from his pocket. He perceived that my eyes were directed to this, and he immediately expressed a wish to leave the apartment. I at once said, "I cannot permit you to do so until I know what you have concealed in your trowsers pocket." He at once mani-

(*u*) "Dans la folie raisonnée sans grande agitation, le malade peut paraître devant celui qui l'interroge avec calme, répondre très juste à toutes les questions et expliquer d'une manière plausible les actions extravagantes qui lui sont imputées."—*Orfila*, tome I. p. 396. Paris, 1848.

(*v*) Winslow on *Medico Leg.*, 128.

fested signs of embarrassment and excitement, and rising rapidly from his seat, endeavored to rush out of the door. He was immediately prevented from doing so, and his pockets emptied, and a razor discovered. In his pocket-book a letter was found, addressed to the corner, intimating to him that he was pursued by an evil spirit, and this impression had driven him to commit an act of self-destruction. Fortunately for our own reputation and the patient's life, this providential discovery was made.<sup>(w)</sup> It may be necessary to see and examine the patient on more than one occasion before the physician is satisfied as to the actual state of his mind. In cases of doubtful character, I would suggest that this course should invariably be adopted, taking the necessary precaution to recommend close vigilance during the interregnum. I suggest this course, in consequence of my being acquainted with the case of a lady, whose removal from home was for a few days temporarily postponed, in compliance with the cautious and judicious advice of the medical man, who admitted that he could not detect, according to his apprehension, sufficient evidence of insanity to justify him in signing the certificate. During the interim she succeeded in destroying herself. In a few instances we are justified in partially acting upon the representations of the family and friends of the alleged lunatic. If a delusion be detected, it must be referred to: and if the patient has committed any overt acts of violence, or manifested a suicidal disposition, it is our duty to refer to these facts, guarding ourselves by stating that we derived such information from parties immediately around the patient. It is important in all cases to specify the character of the existing delusion. The expression of a belief in the fact of delusive ideas, and of the presence of abstract insanity without a specification of facts, renders a medical certificate invalid. I have often seen certificates worded to this effect: 'I have formed my opinions from the fact of the party being insane,'—'being under delusions,'—'being excited,'—'being violent.' These generalizations should be carefully avoided: the more concise the account of the patient's condition, the closer will it be in unison with the expressed wish of the Commissioners in Lunacy. The record of one clear and unmistakable delusion is quite sufficient for all legal purposes. But cases do occur where no delusion can be detected, and yet confinement may be absolutely necessary. Under such circumstances it is the duty of the medical man to enter more into detail as to the facts of the case. Perhaps I may be excused for suggesting, that in every instance of this kind, the parties should keep copies of their certificates."<sup>(x)</sup>

<sup>(w)</sup> It is only in having, says Orfila, an acquaintance with the whole life of an individual, in weighing and comparing every fact, that, in some cases, we can pronounce with certainty upon his actual moral state. It is in interrogating the past that we acquire a knowledge of the present. The same author also states, that when an opinion is asked from physicians upon the actual state of an accused person, they ought, in the examination of his previous conduct, to understand what act is imputed to him, if that should be necessary to influence their opinion. In a report, they should not confine themselves to a simple opinion upon the state of the person who is the subject of it, but, of necessity, should go into details upon the facts observed, in order that the same piece may be submitted to the examination of new experts. The employment of all the means indicated does not always lead to a positive result, and sometimes we are to remain in doubt.—*Méd. Lég.*, Orfila, tome I. p. 400. Paris, 1848.

<sup>(x)</sup> Winslow on Medico Legal Ev. 152; see *ante* § 43.

§ 89. "Certain recent actions at law in this country," says Dr. Hartshorne, "in which heavy damages have been incurred by parties charged with arresting and detaining an alleged lunatic against the will and interests of the latter, have led to greater circumspection, not only among the friends of lunatics, in the procurement of proper medical certificates and other forms required for the admission of insane patients into hospitals, but among the medical advisers in the preliminary examinations of the patients, and the filling up of their certificates. The principal hospitals for the insane of the United States, have printed forms and obligations, which are furnished to the friends of patients to be filled up and signed according to the law of the State and the rules of the hospital. The form of the medical certificate generally requires the patient to have been seen and examined by the physician signing, on the day on which the certificate is dated. In all cases the certificate is expected to apply only to the actual condition of the patient at the time of signing, and to be used without delay in order to be available. The medical certificate must always be accompanied by a formal application for admission of the patient, signed by a responsible guardian, near relative, or friend. These papers have also annexed to them a series of questions relating to the past history and existing condition of the patient, the peculiar symptoms of the case, and the probable cause of the attack; which questions are to be answered by the friends and relatives, and the attending physician. Some hospitals require the signature of two physicians to the medical certificate, neither of them, of course, being connected with the hospitals applied to. The State Lunatic Hospital of New Jersey requires the medical certificate to be formally deposed to by two physicians before a magistrate. Patients sometimes obtain their discharge on a writ of habeas corpus, by proving their apparent fitness to be at large, but are generally removed by friends or discharged when sufficiently recovered, at the discretion of the superintendent. We are not aware of any legal restriction in this country on the liberation of insane patients, except in cases of homicidal or otherwise dangerous lunatics, who have been confined by order of a magistrate, or by a court of law. Such patients can only be released by an authority similar to that which first committed them. There are patients of this class now in durance at the Eastern State Penitentiary of Pennsylvania, and in different State Asylums."(y)

§ 90. It is well to keep in mind the suggestions of Hoffbauer in regard to the importance of an adaptation, by the inspecting physicians, of his own method of examination to the character of the subject. The uneducated and the refined, the bashful, timid, and retiring, and the cunning, insolent, and hardened, the eccentric, the victim of fixed ideas, and the lunatic, each requires a different style of treatment. He must worm his way into the heart of the ignorant man by reference to objects palpable to the sense, and must address the man of education in the spirit which animates him. He must approach the bashful, the timid, and the morose with cordiality and affability, and exercise practical tact, circumspection, and adroitness, in conversing with the cunning, the hardened, and the insolent, impressing them with respect for his per-

(y) Taylor's Med. Jurisprudence by Hartshorne, Phil. 1853, 561, 562.

sonal and mental qualifications. On the whole, the tone of the subject must regulate the tone of the examiner. But where one style of treatment is found of no avail, recourse may be had to the opposite one. Where the patient sits immovable as a statue, without answering any question addressed him, which often occurs in cases of deeply-seated melancholy, further questions should not be asked, but observation alone resorted to.<sup>(z)</sup>

§ 91. That a man is of sound mind, will generally be sufficiently manifest to a prosecuting officer of discretion; but whether a man is really, or only apparently deranged, is a question which cannot be decided with the certainty belonging to science except by a physician; nor is it possible, without a thorough knowledge of psychological medicine, to pronounce upon the influence exercised by specific forms of disease upon given actions.<sup>(a)</sup>

§ 92. It should not be forgotten, however, that it is of much importance in the diagnosis of insanity, that the proper legal and medical functionaries should act *in common*. Written explanations are here of much less value than oral intercourse, where a few words will often suffice to remove a difficulty, to correct an error, or to supply an omission. In visiting a deranged culprit for this purpose, the prosecuting officer should always invite the physician to accompany him. They may then alternately converse with the accused, whereby both the morbid and the criminal peculiarities of the subject will be clearly unfolded to them both. It is well established that a man of unsound mind will act very differently, according as he views the persons before whom he stands with fear, respect, or confidence. It is sometimes advisable to invite the physician's attendance at an official hearing, where, under the semblance of a mere occasional and unofficial companion, he may make a diagnosis the more accurate because unsuspected.

§ 93. It is not to be denied that a lay observer, or an unassisted judge or jury, may be able to distinguish a case of fully developed and clearly manifested insanity; but, aside from the necessity of a knowledge of all the particular relations existing between a given state of disease and a given act, there can be no proper foundation for the infliction of punishment in any case, where the judgment of which it is the execution is not based on the greatest attainable amount of certainty. But this certainty can be no other than that which bears the seal of technical science. Nor will a jurymen, if properly tender of his conscience and of public opinion, base his verdict upon other evidence than that of those best able from long training and close attention, to understand the features of the case. In some cases the difference between a scientific, or technical, opinion, and that of a layman, is not so much in the results attained, as in the guarantee afforded by the superior attainments and more minute expertness of the man of science. The decla-

<sup>(z)</sup> J. H. Hoffbauer, *Die psychischen Krankheiten in Bezug auf die Rechtspflege*, Berlin, 31.

<sup>(a)</sup> Notwithstanding Regnault's elaborate disquisition, "*Du degré de compétence des Médecins dans les questions judiciaires relatives aux alienation mentales*," &c., Paris, 1828, and notwithstanding the occasional contemptuous remarks of Nisi Prius judges in the hurry and irritation of trial, this position is recognized, as has already been seen, by the uniform practice as well as the recognized theory of the law. See *ante* § 45, *n.* See also *Marc*, *die Geisteskrankheiten in Beziehung auf die Rechtspflege*, vol. I. 98.



ration of such a man is insured against the possibility of error to the full extent of the protection of science in its present stage of development. *Pro foro* this degree of certainty is sufficient, because it is the highest attainable; but the same cannot be said of any other. (b)

§ 94. The American authorities falling under this head may be considered as establishing the following points:

(a.) Professional men, experts in psychological medicine, who have personally examined the party, may be asked whether he was insane or not. (c) Such, in fact, has been the uniform and undisputed course in practice in all cases where medical testimony is taken on this point. The English rule is equally definite. (d)

(b.) Even though the witness has not had the opportunity of personal inspection, he may be asked for his opinion on an assumed state of facts, or upon the evidence given on trial. (e) In England this position has been disputed, and though in one or two earlier cases the Courts allowed a greater latitude, yet now it seems to be understood that the witness will be restricted to the results of his personal examination. (f) But notwithstanding this retrogression, it may be maintained without the hazard of dispute that the rule as now settled in America is not only more in accordance with a full investigation of the points in dispute, but with the analogies of the law. It has been already shown that the common law consists of the wisdom of this particular age applied to the exigencies of the particular case; and in this sense it includes not only the decisions of the courts, but the opinions of experts on the particular branches to which their attention has been devoted. (g) Thus the evidence of persons acquainted with navigation is admissible upon the facts as developed in evidence in cases of collision, (h) or loss from alleged unseaworthiness; (i) of persons conversant with handwriting as to whether a paper was forged; (j) of seal engravers as to the genuineness of an impression; (k) of artists, as to whether a picture is an original or a copy; (l) of postmasters, as to the genuineness of a post mark; (m) of scientific engineers, as to the effect of an embankment on a harbor; (n) of

(b) Schürmayer, § 512.

(c) *Com. v. Rogers*, 7 Metc. 500; *M'Allister v. State*, 17 Alab. 434; *Clark v. State*, 12 Ohio, 483.

(d) *R. v. Searle*, 1 Mood. & Rob. 75; *R. v. Offord*, 5 C. & P. 168. See a learned note on this point in 7 Bost. Law Rep. 692. M. Briand, (Med. Leg. 552, Paris, 1852,) says, "Appelés à faire un rapport sur l'état moral d'un prevenu ou d'un accusé, les medecins ne s'immiscent point alors dans les fonctions des juges ou des jurés, mais ils eclairent la conscience des uns et des autres." See also Manuel de Med. Leg. de M. Orfila, T. I. 399. Paris, 1848.

(e) *Com. v. Rogers*, 7 Metc. 500; *M'Allister v. State*, 17 Alab. 434; *Clark v. State*, 12 Ohio, 483; *Com. v. Wood*, MSS. Phil. 1836; *Com. v. Mosler*, MSS. Phil. 1845.

(f) *R. v. Wright*, R. & R. 451; *R. v. Frances*, 4 Cox, C. C. 57; Opinion of Judges, *post n.* (r); though see *contra R. v. Searle*, 1 Mood. & Rob. 75; *R. v. Offord*, 5 C. & P. 168.

(g) See on this point *ante*, § 45, n.

(h) *Malton v. Nesbit*, 1 C. & P. 70; *Fenwick v. Bell*, 1 C. & K. 312; *Thornton v. Royal Exch. Co.* Peak, 25.

(i) *Beckwith v. Sydebotham*, 1 Camp. 116.

(j) *Revett v. Braham*, 4 T. R. 497; *Hammond's Case*, 2 Greenl. 33; *Moody v. Rowell*, 17 Pick. 490; *Com. v. Carey*, 2 Pick. 47; *Lyman v. Lyman*, 9 Conn. 55; *Hublely v. Vanhorne*, 7 S. & R. 185; *Lodge v. Phipper*, 11 S. & R. 333.

(k) *Folkes v. Chadd*, 3 Dougl. 157.

(l) *Ibid.*

(m) *Abbey v. Lill*, 5 Bing. 299.

(n) *Folkes v. Chadd*, 3 Dougl. 157.

practical surveyors, as to whether certain marks were intended as boundaries or terriors; (o) and of naturalists, as to whether the habits of certain fish were such as to enable them to overcome certain obstructions in a river.; (p) And so nothing is more common than to examine a surgeon as to whether death resulted from natural causes, or from certain artificial agencies which may be the subject of inquiry. (q) On this principle the opinion of medical men as to whether particular symptoms, supposing them to exist, constitute insanity, is part of the law of the case. It should be observed, however, as the cases in the note show, that the witness is not to be asked whether on the whole evidence of the case his opinion is that the patient was insane—for that, indeed, would be taking the jury's place—but whether if a certain state of facts be true the inference of insanity would result therefrom. (r)

(o) *Davis v. Mason*, 4 Pick. 156.

(p) *Cottrill v. Mason*, 3 Fairf. 222.

(q) See cases quoted in Wharton on Homicide, 241-4; and see also 1 Stark. Ev. 154; Phil. and Am. on Ev. 899; 1 Green. on Ev. § 440.

(r) See 3 Greenf. on Ev. § 5. In answer to an inquiry by the House of Lords, whether "a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, can be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was laboring under any and what delusion at the time?" the English judges replied, "We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But when the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

In this country the present practice, when medical men are examined as experts, is to ask their opinion as to a hypothetical state of facts. If they happen to have been present during the whole trial, they may be asked their opinion as to the particular facts, supposing them to be true; but the determination of the truth or falsity of the evidence itself should be reserved exclusively for the jury.

"The opinions of professional men on a question of this description," says Chief Justice Shaw, in a late case, "are competent evidence, and in many cases are entitled to great consideration and respect. The rule of law, on which this proof of the opinion of witnesses, who know nothing of the actual facts of the case, is founded, is not peculiar to medical testimony, but is a general rule, applicable to all cases, where the question is one depending on skill and science in any particular department. In general, it is the opinion of the jury which is to govern, and this is to be formed upon the proof of facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration. Shipmasters and seamen have peculiar means of acquiring knowledge and experience in whatever relates to seamanship and nautical skill. When, therefore, a question arises in a court of justice upon that subject, and certain facts are proved by other witnesses; a shipmaster may be asked his opinion as to the character of such facts. The same is true in regard to any question of science, because persons conversant with such science have peculiar means, from a larger and more exact observation, and long experience in such department of science, of drawing correct inferences from certain facts, either observed by themselves or testified to by other witnesses. A familiar instance of the application of this principle occurs very often in cases of homicide, when, upon certain facts being testified to by other witnesses, medical persons are asked, whether in their opinion a particular wound described would be an adequate cause, or whether such wound was, in their opinion, the actual cause of death, in the particular case. Such question is commonly asked without objection; and the judicial proof of the fact of killing often depends wholly or mainly upon such testing of opinion. It is upon this ground, that the opinion of witnesses, who have long been conversant with insanity in its various forms, and who have had the care and superintend-

(c.) The better opinion also is that witnesses, though not experts, who have for a given time had the opportunity of observing the patient, may be asked their opinion as to his sanity. (s) Such witnesses cannot, of course, be examined as to their opinions on a case stated, or on the facts developed in the case on trial, but only as to the results of their personal observation, just in the same way that a man ploughing on the shore can be examined as to the fact of a ship striking a shoal before him, when he could not be admitted to prove the cause of the disaster. And, on this principle, it has always been held admissible to ask subscribing witnesses as to their opinion of the testator's sanity at the time of the execution of the will. (t)

2d. *At what time examinations should be made.*

§ 95. There are three different times in which the conduct of the accused may become the subject of a forensico-psychological investigation: 1, at the commission of the deed; 2, during the trial, and 3, after sentence pronounced. At each of these periods, the judge has a separate point of view from which to regard the state of mind of the defendant, in each the purpose of the inquiry is different, and in each the interrogations to be directed to the physician must be modified accordingly. (u)

§ 96. In regard to the first point, the questions to be asked the physician should be, in general, whether a diseased mental state attended the commission of the act, wherein the disease consisted, and whether

ence of insane persons, are received as competent evidence, even though they have not had opportunity to examine the particular patient, and observe the symptoms and indications of disease, at the time of its supposed existence. It is designed to aid the judgment of the jury, in regard to the influence and effect of certain facts, which lie out of the observation and experience of persons in general. And such opinions, when they come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, are of great weight, and deserve the respectful consideration of a jury. But the opinion of a medical man of small experience, or of one who has crude and visionary notions, or who has some favorite theory to support, is entitled to very little consideration. The value of such testimony will depend mainly upon the experience, fidelity, and impartiality of the witness who gives it.

One caution, in regard to this point, it is proper to give. Even where the medical or other professional witnesses have attended the whole trial, and heard the testimony of the other witnesses, as to the facts and circumstances of the case, they are not to judge of the credit of the witnesses, or of the truth of the facts testified to by others. It is for the jury to decide whether such facts are satisfactorily proved. And the proper question to be put to the professional witnesses is this: If the symptoms and indications testified to by the other witnesses are proved, and if the jury are satisfied of the truth of them, whether in their opinion, the party was insane, and what was the nature and character of that insanity; what state of mind did they indicate; and what they would expect would be the conduct of such a person, in any supposed circumstances." See 1 M. & Rob. 75; Com. v. Rodgers, 7 Metc. 5.

(s) *Clary v. Clary*, 2 Iredell, 78; *Clark v. State*, 12 Ohio, 483; *Grant v. Thompson*, 4 Connect. 203; *Rambler v. Tryon*, 7 S. & R. 90; *Wogan v. Small*, 11 S. & R. 141; *Morse v. Crawford*, 17 Vt. 499; *Lester v. Pittsford*, 7 Vt. 158; *Gibson v. Gibson*, 9 Yerger, 329; *Potts v. House*, 6 Georg. 324; *Colver v. Haslam*, 7 Barbour, 374; *Baldwin v. State*, 12 Missouri, 223; *De Whitt v. Barley*, 13 Barbour, 550; *Kinne v. Kinne*, 9 Conn. 102; *Norris v. State*, 16 Alab. 776; *Wheeler v. Wheeler*, 3 Hagg. 574; and see 7 Bost. Law Rep. (N. S.) 696, where these cases are cited.

(t) *Chase v. Lincoln*, 3 Mass. 237; *Poole v. Richardson*, ib. 330; *Rambler v. Tryon*, 7 S. & R. 90; *Buckminster v. Perry*, 4 Mass. 593; *Grant v. Thompson*, 4 Conn. 203; *Sheafe v. Rowe*, 2 Lees R. 415; *Wogan v. Small*, 11 S. & R. 141.

(u) See Schürmayer, § 516, from whence this head is generally drawn.

the mental and moral functions exercised and implicated in the perpetration, were of such a nature that either *a*, there was no consciousness of criminality and no freedom of volition, or *b*, the possibility of such consciousness and spontaneity was excluded, or *c*, both the one and the other were incapable of ascertainment, and must be left in doubt. The practice which has lately grown up, of interrogating as to a conclusion of law, (*e. g.* was the defendant capable of distinguishing right from wrong, or was he a free agent,) instead of as to a state of facts, (*e. g.* was he laboring under mental disease, and if so, what,) is not only false in theory, but pernicious in result.

§ 97. The *second* period of time becomes of particular interest in our American Jurisprudence, from the fact that when a party alleged to be insane is put on his trial, if insanity be pleaded, the jury are specially sworn to determine the preliminary issue, whether the defendant be insane *at the time of trial*. If the fact be found in his favor, he is confined under special sanctions. If otherwise, the trial proceeds on the main issue.

§ 98. The *third* period of time, at which the state of a culprit's mind is open to medical investigation, is after the close of the trial, and before the execution of the sentence. A man of unsound mind is incapable of understanding the justice of his sentence, or of recognizing a punishment in the evil inflicted upon him. In many cases also the evil will aggravate his disease. For all these reasons it is necessary to be certain that a convict is so far in the possession of all his faculties, that the object of the law in subjecting him to punishment will be answered. The interrogations to be submitted to the physician are to be framed upon this simple principle; and it is self-evident that only such derangements will here come in question as are clearly manifest, and as clearly exclude the possibility of the prisoner's understanding the reason of his punishment.

§ 99. It would be a proper regulation to cause every convict, before undergoing his punishment, to be examined in body and mind by the physician, for the purpose of ascertaining his capacity for the ordeal. Even where the general fitness of the subject is undoubted, there are frequently personal defects which require attention in the treatment of the prisoner during confinement. In several of the German States this precaution is observed—where a convict is found to be insane, he must be subjected to the proper treatment. If a cure is effected, the question whether he is now able to sustain the punishment without danger of a relapse or other injury, is to be decided by the forensic physician, upon a careful investigation of all the symptoms and attendant circumstances.

### 3d. *By what Tests.*

#### (1.) *Physiognomy.* (*v*)

§ 100. "Close attention," says Schürmayer, (*w*) "should be first

(*v*) The features of the face, says Falret, change at each instant or constantly preserve the same expression; the lips, the cheeks, the nostrils, the eyebrows, the eyelids, frequently show convulsive movement; it is the same with regard to the muscles of the eye, and under the influence of these convulsions, the look is troubled, bewildered and unsteady. *Leçons Cliniques sur l'Aliénation Mentale*, M. Falret, huitième leçon, p. 219. Paris, 1854; see also Orfila, *Med. Leg.* l. p. 379. Paris, 1848.

(*w*) *Gerichtliche Medicin*, § 529.

directed to the entire exterior of the subject, his posture, his motions, his gestures, his eye, his words, his intonation, and above all the first impression produced upon his mind by the appearance of the physician. What most distinctly characterizes a mental disease, and is never misunderstood by a skillful physician, is the physiognomy of such a patient. The eye of a madman is the mirror of his soul. He lacks the calm unobstructed gaze peculiar to the sane, untouched by passion or excitement." "Look," says Heinroth, (x) "upon the cunning leer of a lunatic, the savage glare of a maniac, the lack-lustre eyes of a splenetic, or the meaningless stare of an imbecile; such things cannot be counterfeited." (y)

The *form of the skull* is often peculiar in every description of mental disease, but is particularly noticeable in the case of Cretins and natural fools.

§ 101. The expressions of the eye(z) and of the nose(a) have been very capably exhibited by two eminent physiognomists. The latter feature has been examined with peculiar ability by Hoefling.(b) "In the apparently joyous countenance of a laughing madman," he tells us, "the upward traction of the sides of the nose, nevertheless, indicate unmistakably the presence of pain, and this expresses much of the physiognomic peculiarity of such unfortunates.(c) In like manner the simple unmeaning smile of imbecility is marked by the form and shape of the nose, which, with its downward, circular openings, and the tension of the skin on the peak, expresses a torpor, while in the laugh of a sane man the nostrils contract, and become elongated, without a departure of the septum from its horizontal position." The mouth of the simpleton twitches with a constant unmeaning smile, accompanied with a low, inarticulate and thoughtless mumble, and the imbecile is almost always found, sitting or standing, with parted lips.(d) "With many," says Schürmayer, "the mouth is constantly in motion, as if they were talking to themselves. In the paroxysms of mania there is a convulsive distortion or contraction of the mouth. Receptivity for certain external impressions is generally low, particularly in the case

(x) System der gerichtlich psychischen Medizin. Leipsic, 1825, p. 343.

(y) Drawings, very well executed, are to be found in Morrison's Outlines of Mental Diseases. London, 1829, and in Esquirol, *Des Maladies Mentales*. Paris, 1838.

(z) Loebels, Grundriss der Semiologie des auges. Jena, 1817, p. 27.

(a) Hoefling, in Caspar's Wochenschrift, 1834.

(b) Ibid.

(c) "To represent the prevailing character and physiognomy of a mad man, the body should be strong and the muscles rigid and distinct, the skin bound, the features sharp, the eye sunk; the color of a dark brownish yellow tinged with sallowness, without one spot of enlivening carnation; the hair sooty black, stiff and bushy, or of a pale, sickly yellow with wiry hair."—*Anatomy of Expression*. Sir Charles Bell, London. 1844.

"His burning eye whom bloody strokes did stain,  
Stared full wide and threw forth sparks of fire;  
And more for rank despight than for great pain,  
Shak'd his long locks, colored like copper wire,  
And bit his tawny beard to show his raging ire."

[*Faery Queen*, Book ii. canto 4, v. 15.]

(d) Danz, *Allgemeine Medizinische Zeichenlehre*. Heinroth's edition. Leipsic, 1812, p. 353.

of impressions accompanied with pain,(e) of cold, heat, and certain medicines."

(2.) *Bodily Health and Temperament.*

§ 102. Hereditary tendency to insanity will in a moment be considered. Under this head, it is proper to notice the importance of the attention of the medical examiner being turned to temperament, disposition, and age; in the case of females, to the development of the functions of menstruation, pregnancy, delivery, suckling, to mental characteristics, powers, and habits; to the condition in life and profession; to the questions of rest and exercise, sleep, and watching; to excessive evacuations, particularly if connected with sexual gratifications; to sexual abstinence; to bodily injuries, particularly in the head, inflammatory affections of the brain or its membranes, diseases of the heart, hemorrhoids, obstructions of the abdomen,(f) and to cutaneous diseases.

§ 103. To what extent insanity is accompanied with physical disorganization, is illustrated by a case mentioned by Wigan in his remarkable work on the duality of the mind.(g) "The gentleman held a situation in which he had many younger persons under him. I purposely leave the designation obscure. He had risen to the head of the office by long and exemplary services. He was a widower, and had had a considerable family, all of whom, however, died in their youth. He exercised a parental control over his subordinates, and was extremely respected by every one who knew him. His salary was ample, his excessive benevolence had, however, always kept him poor, but as his style of living did not imply the expenditure of more than half his income, he had the reputation of wealth. Gradually, towards the age of sixty, this gentleman became garrulous and light in his conversation, and the others in the office suspected him to have been drinking. He had many rebuffs from the persons under his command, but this in no degree changed the indecorous levity of his conversation, which had formerly been remarkably dignified, and as reserved as was compatible with his excessive benevolence of disposition. Months and months passed on, his language became gradually worse, and at last was of the most depraved obscenity. This shocked and disgusted his juniors, and he was seriously threatened with exposure by them. The propensity was checked for a while, but after repeated offences and repeated forgiveness by the young men, they made a formal complaint to his superiors. The offender was taken to task very seriously, but, as the young men had given rather a lenient representation of his conduct, he was permitted one more trial, with the assurance that his next offence would be followed by dismissal. There was soon an opportunity of putting the threat in force, for his conduct and conversation became more and more gross and disgusting. He was dismissed. Having made no provision, he suddenly found himself utterly destitute,

(e) Compare Friedreich, *Handbuch der Allgemeinen Pathologie der psychischen Krankheiten*. Erlangen, 1839, p. 121.

(f) "Unterleibstockungen," Schürmayer,

(g) A new view of Insanity, &c., by A. L. Wigan. London, 1844, p. 81.

but did not make known his position. He packed a bundle of necessary clothes, put in his pocket whatever money and trinkets he possessed, and wandered about the country without aim or object. Every one lost sight of him for two or three months, when he was found in a remote part of the kingdom *literally dead on a dunghill*, where it is supposed he had laid himself down for warmth; his money was gone, and from the state of the stomach and intestines, it is probable that he had died of want of food as the immediate cause, but on examining the interior of the skull, there was found extensive softening and disorganization of the left cerebrum, and the other was not free from disease. He could not have lived long; though, under proper care, the disease would not have been immediately fatal.”(h)

A diminution of sensibility, says M. Falret, in his late work,(i) is not of common occurrence in mental diseases, its exaltation being much more frequent. It is proper, however, to state that deranged persons are generally as sensible of temperature and impressions as persons ordinarily are. Lesions of the sensibility, however, are observable in all kinds of insanity, and especially in those cases in which mystical ideas are predominant, in demonomania and paralytic insanity. General insensibility has been known to take away from some madmen the sense of their own existence. M. de Foville cites the example of a man who thought he had died at the battle of Austerlitz, at which he received a severe wound. His insanity consisted in his inability to recognize and feel his own body. When any one inquired after his health, it was customary for him to reply, “You ask me how father Lambert is? but father Lambert is no more, he was killed by a bullet at Austerlitz. That which you see here, is not him, but a machine which they have made to resemble him, and which is very badly made, so try and make another.” Never, in speaking of himself, did he say “me,” (moi,) but “that,” (cela.) This man fell several times into a complete state of immobility and insensibility, which lasted several days. Sinapisms and blisters applied to guard against these accidents, never produced the least symptom of pain. He often refused to eat, saying: “ça n’avait point de ventre.”

Esquirol was unable to discover any sign of pain in passing a pin through the skin of the arm of a demonomaniac, who asserted that he no more felt anything, and who imagined that his body had been carried away by the devil.

In regard to anomalies of general sensibility associated with no illusion, there are madmen who appear insensible to the ordinary causes of pain. Esquirol speaks of an idiot girl who was in the habit of scratching a lump she had upon her cheek, and did not stop until she had perforated it, and after having performed this perforation, she enlarged the wound by continually pulling at it with her finger. We have often seen deranged persons cut themselves in different parts of

(h) Generally of all the causes of mental alienation, the most frequent, without doubt, are cerebral affections or some alteration of the encephalic organ, and perhaps we should agree with Haslam in saying, that the primitive cause of mental derangement is *always* to be found in these alterations.—*J. Briand, Méd. Lég.*, p. 544. Paris, 1852.

(i) *Leçons Cliniques de l’Aliénation Mentale*, par M. Falret. Septieme leçon, p 135. Paris, 1854.

the body without appearing to suffer. But the greatest phenomenon of insensibility is the indifference with which persons afflicted with insanity support *cold*. They have been known to expose themselves in the open air, to sleep upon the ground, flagstones and the floor, when the ice and snow caused persons warmly clad, to shiver. And imprudences like these appear to have a less dangerous influence upon the insane than upon others. This fact, however, has been much exaggerated, and in many instances the ordinary effects produced by cold, are observable in the deranged. These unfortunates are so exposed to freezing, that in many establishments there is an express law to visit, morning and evening, and wrap in flannel the feet of those whose condition causes these dangerous consequences to be dreaded.(j)

§ 104. Hunger and thirst are usually quite vivid, digestion varies, while the bowels are almost invariably obstructed. The skin is usually dry, rough, and inactive. The presence of almost all persons of unsound mind is distinguished by a peculiar specific smell.(k) Others show themselves equally indifferent to *heat*. There are some who walk and sleep, entirely naked, in the sun upon the hottest days, and who can look fixedly, for a long time upon this planet, without being dazzled by it.

*The genital functions* are ordinarily preserved by the insane; sometimes, indeed, their activity is increased, although the mental disease may not be of erotic origin. This super-excitation of the genital organs, independent of physical or moral erotomania, is particularly observable in agitated delirium; whilst in despondent delirium they are inactive at least if it have not love for a cause or object. The cases, are rare, however, where the sexual organs are attacked with insensibility or impotence, except in general paralysis. The aptitude of man and woman for the venereal act and for fecundation is not lost; only in insanity as in sound mind, the rapid succession of ideas, the violence or tenacity of pre-occupations foreign to amorous desires are capable of bringing on an inactivity of the genital functions.

The *pulse* forms no test. M. Jacobi has instituted experiments in a large number of cases of the different forms of mental unsoundness, indicating at the same time the relative pulsations of the several arteries, auscultating the heart, and counting the number of inspirations and expirations. The attempt to deduce a fixed rule, however, was in vain. "I had the vexation," he tells us, "to see that my researches, so conscientiously made, did not fulfil the end I had proposed; and I saw that it was impossible to establish the necessary connection between the different pathological states of the intellect and feelings, and the observations I had collected on the state of the circulation, the respiration, and the temperature of the skin, in the insane.(l)

(j) "Dans le plus haut degré de la manie les malades oublient leurs besoins, et sentent à peine, ou pas du tout, la douleur, le froid et le chaud."—*Manuel de Méd. Lég.* M. Orfila. Tome I. p. 377. Dr. Rush makes insensibility to the weather, particularly cold, a marked test.

(k) Compare Hill's Essay on the Prevention and Cure of Insanity. London. 1814. p. 401. Erhard in Wagner's "*Beiträgen zur Philosophischen Anthropologie.*" Vol. I. Vienna, 1794. p. 111. Milling's *Mentis Alienationum Scmiologica Somatica.* Bonn. 1828. § 15. Burrow's Commentaries. p. 297.

(l) Jacobi *Annales Medico-Psychologiques.*



The *secretions*, and particularly the perspiration, are imperfectly performed in the majority of insane cases. In these cases there is a dry skin of an unhealthy color, and the exhalation of a disagreeable smell. They do not grow thin but even become fat, although eating little, because they perspire badly. They urinate a great deal, and the passage of urine is frequent as is common in all nervous disorders. *Constipation* is an almost habitual attendant of the disease.

Without being oppressed, the *Respiration* in the insane is very often unequal, hurried, diminished, interrupted, and sobbing. Their breath is often fetid, and this accidental fetidity, an ordinary symptom of all nervous diseases, frequently announces the approach of an attack of melancholy, mania, or hysteria.<sup>(n)</sup>

§ 105. The most interesting symptoms are found in the various abnormalities of the sensorial system, as manifested in the excitement, depression, or delirium of one or the other of the senses. An excitement or depression of the sensorial system generally keeps even pace with the mental malady. Before the mental disease breaks out, and while its advent is indicated by mental and moral excitations, an enhanced excitability in the sensorial system becomes perceptible, which, however, where the psychical energies are gradually exhausted by the recurrence and violence of the paroxysms, frequently turns to an opposite condition, so that the failing, obtuseness, or loss of one of the senses attends the subsequent progress of the evil. According to Spurzheim,<sup>(n)</sup> the ear is the sense, which, of all others, suffers most among the insane, and there are more deaf than blind among them. The deliria of the senses, which are either illusions, or hallucinations, are found in every form of the disease; they sometimes attack one sense only, sometimes several, and sometimes, though rarely, all the senses at once.<sup>(o)</sup>

Esquirol gives it as the result of his experience<sup>(p)</sup> that when the alienation of the mind begins, and sometimes a little earlier, smell and taste have changed, but the deceptions of the ear and the eye generally characterize the fancies of most madmen. The deliria of smell are less frequent than those of the other senses, those of taste are of the most various kind, and those of touch impress the patients with the existence of attributes in bodies other than those which they possess. These deliria frequently give rise to fixed ideas; particular postures, various attitudes and motions, are observed in almost all madmen. Guislain<sup>(q)</sup> comprises them under the name.

§ 106. A change of moral disposition is one of the first symptoms,

(m) *Leçons Cliniques de l'Alienation Mentale*, par M. Falret. Septieme Leçon. p. 185. Paris. 1854.

(n) *Beobachtungen ueber den Wahnsinn. Nach dem Englischen und Franzoesischen bearbeitet von Embden*. p. 81. See Méd. Lég. M. Orfila. Tome I. p. 358. Paris, 1848. Or, Méd. Lég., Briand. p. 540. Paris, 1852.

(o) For a full account of the illusions and hallucinations of the senses we would refer the reader to the *Leçons Cliniques sur l'Alienation Mentale* de M. Falret. 3d, 4th, 5th, 16th lessons. Paris, 1854. Also to the *Etudes Médico-Psychologiques sur l'Alienation Mentale*, par F. E. Renaudin. Chap. 8th, p. 388. Paris, 1854.

(p) Compare Hagen *Die Sinnetauschungen in Bezugauf Psychologie Heilkunde, und Reihthspfege*. Leipsic. 1837.

(q) *Traite sur les Phrenopatpies*. Bruxelles, 1833. p. 240.

other than physical, with which the disease usually makes its appearance. Extreme irritability, proneness to anger, suspicion, concealment, obstinacy and perverseness, are common. In regard to the affections, various abnormal impulses and inclinations are observed. Fondness or aversion to particular persons, without any special reason; disposition to exercise cruelty, murderous desires, a wish to commit arson, or to steal.(r) Memory is generally good in reference to things occurring during the disease, or to persons with whom the patient was then connected, but defective or mistaken as to things which occurred previously.(s) Of the intellectual faculties not all are uniformly in an abnormal state; on the contrary, some functions occasionally improve, thus producing a complex state of madness, on the one hand, and of wit, reflection, and shrewdness, on the other.(t) Monomania is also included under this head. There is often a disposition to soliloquize aloud; and to laugh, without a visible reason.

### (3.) *Hereditary Tendency.*(u)

§ 107. The teaching of observation on this point is that not only does the existence of insanity in the offspring afford a violent presumption of

(r) See § 192. A deranged person, says Orfila, regards with indifference the dearest objects of his affections, he thinks no more of them or holds them in such aversion as to repel, injure, and maltreat them. Hatred, jealousy, anger, wickedness, fear, terror, a disgust for life, a desire to destroy and kill, replace the most equal, calm, and softest nature.—*Manuel de Méd. Lég.* M. Orfila. Tome I. p. 382. Paris, 1848.

(s) A great many remember things which occur; and after their recovery, they often astonish by remarks which they had made at a time when they seemed most completely deprived of their reason.—*Méd. Lég.* J. Briand. p. 540. Paris, 1852.

(t) See cases collected by Friedreich, *Handbuch der allgemeinen Pathologie.* p. 189. See *post.*, § 113.

(u) "Although at the first glance," says Renaudin, "man appears to possess an independent existence, isolated from his birth from those who begot him, although there is but little apparent relation between his ripe age and first infancy; it is not the less true that behind the characters peculiar to his individuality, we can discover certain typical signs some of which betray his nationality and others relate to his family. These typical signs are to be encountered not only in his physical organization, but are also found in his moral idiosyncrasies, and if tradition is of any force as regards manners and customs, inheritance is certainly of great value as relates to the tastes and habits. It is, in fact, manifested in the transmission from generation to generation of the most inveterate maladies, before which art is obliged to confess its weakness; and it is with difficulty prophylactic measures ward off the sad result. In mental alienation also, experience furnishes us daily proofs of this transmission, of which it is essential to study the mode.

The question whether this transmission is direct, or results from a predisposition whose development is due to the influence of an occasional cause, or, in other words, whether by itself it is an essential condition of causality, is no longer doubtful, and we now possess numerous examples not only of hereditary transmission, but also of an hereditary accumulation of the morbid predispositions. This is particularly the case in families where wedlock is limited to a small circle of fortune and social fitness. The royal families of many countries have not escaped this law. We see generations of insane succeed each other with an unyielding regularity, and there are families which in this relation seem pursued by a desolating fatality.

Aside from idiocy and imbecility, which show themselves a short time after birth, the predisposition does not ordinarily show itself until the individual has reached a certain development—that is to say, when all the conditions of causality are reunited. This native predisposition does not suppose that those that preceded were insane, it depends, above all, upon the conditions in which they are placed and which re-act upon the phases of their existence. This predisposition is also progressive from one generation to another; and it is in this manner that great social commotions and certain epidemics

its existence in the parent, but that its existence in the parent affords the same presumption as to its existence in the offspring.

In regard to *idiocy*, the facts are very striking. "Suffice it to say," we are told by Mr. S. G. Howe, chairman of the Massachusetts State Idiocy Commission, in a very luminous report, submitted in 1848, "that out of 420 cases of congenital idiocy examined, some information was obtained respecting the condition of the progenitors of 359. Now in all these 359 cases, save only four, it was found that one or the other or both of the progenitors of the unfortunate sufferers had, in some way, widely departed from the normal condition of health, and violated the natural laws."

The hereditary transmission of moral insanity is equally well authenticated. "We have no doubt," says a very eminent physician, "that various immoral and vicious practices ought to be ascribed to insanity. When periodic insanity has shown itself in a large family, it is probable that some members of the family will evince a propensity to thieving or swindling.(v) And when more children than one of the same parents, bursting through all the restraints imposed by carefully-instilled principles and established habits, engage in swindling transactions, it will often appear, upon inquiry, that insanity has generally broken out in that family."(w) And the same high authority tells us that in families where insanity prevails with the progenitors, he has known two, three, or four children of the same parents become deranged. One instance in particular he dwells upon, in which, among a family of twenty persons, the children of a brother and of two sisters, *ten* were afflicted with insanity.

A late very interesting table, originally published in the London Quarterly Review,(x) and endorsed by Dr. Winslow,(y) shows at once the importance of this inquiry:

contribute to the production of insanity, in leaving after them deep distress or in producing a disordered exaltation.

All causes capable of altering the public health have a marked influence upon the immediate production of insanity or upon the hereditary transmission of its predispositions. The unhealthiness of dwellings, and insufficiency or bad quality of food are so many circumstances influencing its production, and to which municipal governments should pay serious attention. It is on account of these and other analogous causes that cretinism and idiocy are endemic in certain localities, and that this influence is exercised not only on natives, but also upon those establishing themselves there.

The mode of life of the parents, and the diseases they have had are no less efficacious in producing a predisposition to mental unsoundness. If insanity has existed in those that preceded, the chances of a direct transmission are much more probable. This predisposition is sometimes so marked as to be in some measure the only cause. Among the circumstances most likely to produce an hereditary predisposition, we should mention, drunken habits in the parents. Many, indeed, are the cases of idiocy and imbecility which owe their situation to this cause. Many generations thus suffer the punishment inflicted for the faults of one alone.

The hereditary predisposition presents numerous varieties in its evolution. Many members of the same family are free from mental unsoundness; and one only becomes insane. In another the inheritance shows itself from mother to daughter as a consequence of parturition. This predisposition sometimes consists only in the peculiarity of character, which drags the man towards a precipice which conducts irresistibly to insanity."—*Etudes Medico-Psychologiques*, par L. F. E. Renaudin. Chap. II. p. 33. Paris, 1854.

(v) See *post*, § 192.

(w) *Essays on Partial Derangement in Supposed Connection with Religion*. By the late John Cheyne, M. D. Dublin, 1843.

(x) No. 163.

(y) *Lectures*, &c. 150. See *Rush on the Mind*, 46, where this point is fully examined.

Initials of Criminals.	Verbatim extracts from Letters of Referee.	Observations on degree of intellect, &c. by the Chaplain when first seen.	School-master's Report on Leaving Prison.	State of leaving the Prison, as noted by Chaplain.
J. C.	Mother touched with symptoms of Insanity.		Improved in reading and writing.	Improved generally.
R. L.	Grandmother insane.	Read imperfectly.	Read well, wrote imperfectly, four rules of arithmetic.	Very cheerful; improved in general knowledge.
J. H.	Sister rather weak in mind.	Only knew the alphabet.	Read and wrote well; Rule of Three.	Sent away incorrigible.
H. N.	He and most of the family evinced symptoms of insanity.	Of the lowest kind.	Read very imperfectly; write a little; learned a little arithmetic.	
J. C.	Two sisters insane.	Of the lowest intellect, did not know A, B, C.	Read well, wrote tolerably, 4 rules.	Somewhat improved in general.
D. M.	His mother subject to nervous fits.		Read and wrote well; Rule of Three.	Mentally, not morally improved.
J. D.	One of his family (his mother, I have every reason to believe) laboring with insanity.		Read and wrote well; four Rules.	Improved in religious knowledge; very cheerful.
R.	Of a simple turn of mind. Uncle in Asylum.		Improved considerably.	In Scriptural knowledge also.
W. J. alias	Skull fractured three years ago.		Improved in reading and writing. Rule of Three.	Improved in Scriptural knowledge.
W. C. B.	Sister considered rather silly.	Of the lowest intellect, did not know the alphabet.	Read and wrote imperfectly; four Rules.	Cheerful.
W. G.	Had become <i>dejected</i> and <i>absent</i> after failure in business, and showed symptoms of <i>insanity</i> .	Very low in spirits.	Read and wrote well. Rule of Three.	Much improved in spirits; found comfort in religion.
A. H. L.	Considered rather as an <i>idiot</i> .	Very low degree of intellect.	Read and wrote well. Rule of Three.	Improved in general knowledge.
J. N.	Almost irresponsible.	Of very weak intellect.	Well educated previously.	Rather improved mentally.
W. N.	Weakness of mind, made sport of by fellow-servants.	Low in spirits and intellect.	Read and wrote well. Rule of Three.	Mentally improved.
A. A.				

Initials of Criminals.	Verbatim extracts from Letters of Referee.	Observations on degree of intellect, &c. by the Chaplain when first seen.	School-master's Report on Leaving Prison.	State of leaving the Prison, as noted by Chaplain.
F. W. K. <i>alias</i> A. K.	Uncle died in an Asylum; another committed suicide. Father and sisters considered weak.	Low in spirits. Over-active mind; disliked his trade.	Very well educated.	Morally improved.
J. M. F.	Mother's brother reported to be imbecile; harmless if let alone.	Of a low degree of intellect.	Read and wrote well. Rule of Three.	Improved in general; was recommended to be master tailor on board ship.
R. B. <i>alias</i> F. S. <i>à Jec.</i>	Not considered quite correct in his mind. Aunt mad for a long time.	Peculiar turn of mind.		Greatly improved, especially in Scriptural knowledge.
D. M.	Considered a simpleton.	Low intellect.	Read well, wrote imperfectly, four Rules.	Improved generally.
J. M. <i>alias</i> J. T.	Uncle killed himself in a fit of insanity.	Low in spirits and intellect.	Read well, wrote tolerably. Rule of Three.	Much improved.
C. J. C.	Elders brother exhibited symptoms of insanity.	Good intellect.	Well educated.	Improved generally.
T. N.	Whole family eccentric, and very weak in intellect.	Weak intellect.	Read and wrote well. Rule of Three.	Improved generally.
R. R.	Uncle's intellect affected at times.	Low intellect; only knew the alphabet.	Read well, wrote imperfectly, four Rules.	Improved generally.
J. T.	Father died a lunatic.	Ordinary intellect.	Read and wrote well. Rule of Three.	Very much improved in general.
J. S.	I have thought, and more I am sure, that at times he was not altogether right in his head.	More than ordinarily reserved and very dull.	Read tolerably; wrote imperfectly; improvement very little.	On the whole rather improved.
H. C. <i>alias</i> L.	The prisoner's conduct, more especially his wandering propensities, are irreconcilable with perfect sanity.	A good intellect; apparently much compunction for sin.	Could read and write well; considerably advanced in the higher rules of arithmetic; improvement tolerably fair.	Improved very much. Found peace and comfort in the Gospel.
G. R.	He was not quite sound in mind, and sometimes not conscious of what he was about. His own sister destroyed herself.	A very low-spirited man.	Could read and write very well; considerably advanced in the higher rules of arithmetic; intelligent; made fair improvement.	Improved in spirits. Found comfort in religion also, I think.

W. H.	His mother has evinced symptoms of insanity within the last three years.	Nothing at all peculiar.	Read well, wrote tolerably, higher rules of arithmetic. Improvement tolerable. Improvement tolerable.	Improved very much, especially in the memory. Gave himself to learning hymns, chapters, &c.
II. L.	His father was subject to fits.	Very low-spirited.	Could read and write well; mensuration. Improvement tolerable.	Very down-hearted, would have sunk here, I think, but for some religious hope.
J. B.	One member of the family has exhibited symptoms of insanity.	Ordinary.	Read well; wrote tolerably; knew common rules of arithmetic. Improvement tolerable.	Improved.
II. B.	I have known the person to have fits when over-fatigued.	Ordinary.	Read well; wrote tolerably; common rules of arithmetic. Improvement tolerable.	Very cheerful.
J. K.	He received an injury in his head; from this time he became flighty and unsteady. His father was in some measure imbecile in both body and mind.	A very active mind, but most perverse.	Could read and write well; higher rules of arithmetic. Improvement tolerable.	Cultivated his mind assiduously, but was very perverse to the last.
W. S. <i>alias</i> R.	Have found him a little insane at times; he was kicked by a horse in the head.	Ordinary.	Could read well, write tolerably, Improvement little.	Rather improved.
W. F.	I knew him to labor under severe nervous fever for several months, which I always observed afterwards to cause a lowness of spirits. It was about eight years since.	Good, but his constitution apparently weakened by intemperance.	Read and wrote well; advanced in higher rules of arithmetic. Tolerably improved.	Very cheerful. Much improvement in every way. Gave great attention to religion.
J. A. <i>alias</i>	Has not his senses perfect.	Half-witted.	Could read well; made scarcely any improvement.	Rather worse.
E. W.	I fully believe him to be at times insane. His maternal grand-father died insane.	Clever, good, but perverted and abused.	Was well educated on admission; was excused from school. Improved himself tolerably by reading and private study.	Not improved.
W. D. <i>alias</i>	Very soft in many things.	Low intellect.	Could scarcely read any. Very little improved.	Rather worse.
J. B.	His grand-mother is in an Lunatic Asylum.	Ordinary, but very dull.	Read well; wrote tolerably; four rules of arithmetic. Improved a little.	Improved rather in spirits.

Dr. Steinau, in his *Essay on Hereditary Disease*, mentions a very interesting incident bearing on this point.<sup>(x)</sup> "When I was a boy, there lived in my native town an old man, named P——, who was such an inveterate thief, that he went in the whole place by that name; people speaking of him used no other appellation but that of *The Thief*, and everybody then knew who was meant. Children and common people were accustomed to call him by that name, even in his presence, as if they knew not his other name; and he bore it to a certain degree with much good-natured forbearance. It was even customary for the tradesmen and dealers, who frequented the annual fair in the place, to enter into formal treaty with him; that is, they gave him a trifling sum of money, for which he engaged not only, not to touch their property himself, but even to guard it against other thieves. A son of this P——, named Charles, afterwards lived in B—— during my residence there. He was respectably married, and carried on a profitable trade which supported him handsomely. Still he could not help committing many robberies quite without necessity, and merely from an irresistible inclination. He was several times arrested and punished; the consequence was, that he lost his credit and reputation, by which he was at last actually ruined. He died while still a young man, in the house of correction at Sp——, where he had been confined for his last robbery. A son of this Charles, and grandson of the above mentioned and notorious P——, in my native town, lived in the house where I resided. In his earliest youth, before he was able to distinguish between good and evil, the disposition to stealing, and the ingenuity of an expert thief, began already to develope themselves in him. When about three years old, he stole all kinds of eatables within his reach, although he always had plenty to eat, and only needed to ask for whatever he wanted. He therefore was unable to eat all that he had taken; nevertheless he took it, and distributed it among his playfellows. When playing with them, some of their playthings frequently disappeared in a moment, and he contrived to conceal them for days, and often for weeks, with a slyness and sagacity remarkable for his age. When about five years old, he began to steal copper coins; and at the age of six years, he began to know something of the value of money, and he looked out for silver pieces; and in his eighth year, he only contented himself with larger coins, and proved to be, on public promenades, an expert pickpocket. He was early apprenticed to learn a trade, but his master being continually robbed by him, soon dismissed him. This was the case with several other tradesmen, till at last, in his fourteenth year, he was committed to the house of correction."<sup>(y)</sup>

A late writer gives us the following additional illustration:—"A gentleman recently returned from New South Wales told me," says the author, "that he was present one day at a factory or barrack, where the convicts are kept until engaged by a master, when a gentleman came in, and seeing a youth whom he thought would suit him, he said to him, 'Well, my lad, how are you?' 'A London thief,' was the boy's reply, touching his hat. 'What can you do?' 'Thieve, sir.' 'No

(x) See *Pathological and Philosophical Essay on Hereditary Disease*, p. 19, No. 21.

(y) See *post*, § 190-194.

doubt of that,' said the interrogator; 'but how were you brought up?' 'To thieve, sir,' was the boy's answer. 'Nonsense! What was your father?' 'A thief, sir.' The gentleman, now, probably humoring the conversation, continued to inquire concerning his mother and family, when it appeared that he had five brothers and five sisters, all of whom in the same manner were thieves." (z)

§ 108. "Nothing," says Mr. Hill, in his recent work on crime, "has been more clearly proved than that crime is, to a considerable extent, hereditary—crime appearing, in this respect greatly to resemble pauperism, which, according to the evidence of the Poor-law Commissioners, often proceeds from father to son in a long line of succession." (a) He adduces numerous cases in confirmation of the fact. One of the most striking applies to the families of three brothers, containing together fifteen members. Of these, no fewer than fourteen were utterers of base coin, while the fifteenth, who appeared to be an exception to his kindred, was, at length, detected in setting fire to his own house, which he had insured for four times its value. Supposing each of those employed in uttering base coin to have passed only one piece a day and to have had a career of five years' duration, (which there is reason to believe is about the average,) no fewer than twenty thousand offences might have been prevented by removing the three brothers permanently from society, before they became fathers of families." The disposition to commit crime is often unquestionably an incurable form of insanity; hence, we read of persons who are all their lives criminals, and only terminate one period of imprisonment to recommence another. The case of a woman, is cited by Mr. Hill, who continued in a career of crime for twenty-five years; and that also of another woman, fifty years of age, who had already been in prison sixty-seven times. Furthermore, he refers to another example, of a woman who had been in the police cells, in Edinburgh, at least one thousand times, chiefly for acts of violence. (b)

In a *legal* as well as a *psychological* view, the relevancy of evidence of hereditary taint has been very ably shown by a late eminent judge, (c) whose capacity as a mental observer was not less than his ability as a judge. On the trial of the issue, the object of which was to determine the validity of the will of Captain Arrowsmith, the evidence was that the deceased was a retired mariner who had attained a competence; the plaintiff was his sister, his heir by descent, as the last of her father's issue; and the defendant, his housekeeper, was his devisee. The fact in contest was his sanity. There was no evidence of practice or imbecility; but the plaintiff's witnesses testified as to acts of sudden and unprovoked passion, violence, wildness, extravagance and eccentricity; and, in order to corroborate the inference from them, her counsel offered the deposition of Susan Arrowsmith, the widow of one of the testator's brothers, that the testator's father was insane towards the close of his life; that one of the testator's two uncles, on the father's side, was insane, and the other imbecile; that his two aunts, on the same side, and their children, were insane; that a son of one

(z) Old Bailey Experience, 34.

(a) Crime; its amount, causes and remedies. By Frederick Hill, Barrister-in-law, late Inspector of Prisons, 1853, p. 55.

(b) Ibid.

(c) Gibson, C. J.



of them is in a mad-house; and that her own husband was mentally disqualified before his death. The admission of the deposition was opposed, on the ground that the legitimate inquiry was into the state of the testator's mind, not that of another; and that it did not follow, that because the testator's father and his collateral relations were insane, that he must have been so too. The point was elaborately argued on principle and authority, but the Chief Justice said:—"I admit the deposition without hesitation, notwithstanding the dicta of Mr. Shelford, (*d*) and Mr. Chitty, (*e*) that it is an established rule of law not to admit proof of insanity in other members of the family in civil or criminal cases. Established! When, where and by whom? Certainly not by the House of Lords, in *McAdam v. Walker*, (*f*) the only case cited for it, for the question there was avowedly dodged. That high court would not shock common sense by affirming the order of the Scotch Court of Session; nor would it gratuitously reserve it, when the decision could be safely put on another ground. The authority of a judgment appealed from, and left in dubio, cannot be very great. Sir Samuel Romilly's argument against the evidence was rested on the fecundity and interminableness of collateral issues; and Mr. Chitty seems to have had a glimpse of the same idea, when he said the course is to confine the evidence to the mental state of the party. But every new fact, though it open a new field of inquiry, is not collateral. It may bear directly on the fact in contest; and where it does so, it is not in the power of the court to shut it out. A collateral issue is such as would be raised by allowing a party to put a question to a witness on cross-examination in regard to a fact palpably unconnected with the cause, in order to afford an opportunity to discredit him by contradicting him; but does not proof of hereditary madness bear directly on the condition of the mind, which is the subject of investigation? What if the point had been ruled by the chancellor and law judges in the House of Lords? Profoundly learned in the maxims of the law, they were profoundly ignorant of the lights of physiology; yet free from the presumptuousness of which ignorance is the foster-father, they refused to rush on the decision of a question to which they felt themselves incompetent. Mr. Chitty fancifully puts the solution of questions of insanity on the doctrine of legal presumptions. 'As the imputation,' he says, 'is contrary to the natural presumption of adequate intellect, the deficit should be established by *direct* and *positive* evidence, and not merely to be conjectural or probable proof.' If that be law, a question of insanity is the only one in which positive evidence is required, and circumstantial evidence to corroborate, is rejected. Why is evidence of an old grudge admitted against a prisoner, as a remote proof of malice, if the remote proof of hereditary insanity may not be given by him, to rebut it; and why should the presumption of sanity be allowed to overbear the presumption of innocence, the strongest of them all? I admit that hereditary insanity will not itself make out a case for or against a member of the family; but to say that it may not corroborate what Mr. Chitty calls direct and positive proof, without defining it, staggers all belief. In a

(*d*) Treat. on Lunacy, 59.

(*e*) Med. Jurisp. 355.

(*f*) 1 Dows. Par. Ca. 148.

measuring cast it ought to prevail. He says harsh conduct, bursts of passion, or displays of unnatural feeling will not, *of themselves*, establish insanity. Be it so. But because the springs of such actions are concealed, are they never to be laid bare, and shown to be seated in the blood. When it is admitted by Mr. Chitty and Mr. Shelford themselves, that insanity is a discendible quality, they give up the argument. There can be nothing unreasonable in referring wild, furious and unnatural actions, not otherwise accounted for, to the aberrations of a mind, the reflux of that of a crazy father. Mr. Taylor, a distinguished lecturer on Medical Jurisprudence, in Guy's Hospital, London, says that 'in making a diagnosis of a case of insanity, the first question put is commonly in reference to the present or past existence of the disorder in other members of the family. There can be no doubt, from the current testimony of many writers on insanity, that a disposition to the disease is frequently transmitted from parent to child through many generations. M. Esquirol has remarked, that this hereditary taint is most common of all cases to which insanity can be referred.' (g) M. Esquirol was, in 1838, and perhaps is still, the principal physician to the hospital for the insane at Charenton, in France, and a member of the Royal Academy of Medicine at Paris. His tables of insanity are held in high repute, by not only the physicians of France, but of Europe. Well might Mr. Taylor say that these things ought to be borne in mind by medical jurists. The knowledge attained by men, of a subject with which they have grappled all their lives, ought surely to prevail against knowledge gleaned from the hornbooks of a profession to which the gleaners did not belong. Strange that a source of information open to every one else, should be closed to those who are to pass on the fact. Every man has observed that there are families through which insanity has been handed down for generations; and why should the probability of hereditary madness be excluded, when probabilities in other cases are weighed, especially when it is known that a proclivity to theft, intemperance, lying, cheating, and almost all other moral vices, are as transmissible as gout, consumption, deafness, blindness, and almost all other constitutional diseases. It is supposed by the million, that insanity is a disease of the mind, not of the body. Ridiculous! If it were, it could never be cured; for the mind cannot take physie, or be separately treated; yet the statistics of the insane exhibit a great number of cures, and the time is fast coming, when insanity will be considered the most manageable disease that flesh is heir to. An objection to an inquisition which does not disclose the specific nature of the ancestor's infirmity, might stand in a different light; but testimony which brings the fact of madness home to him, ought to be received like evidence of family likeness, which, though less reliable, was allowed to be corroborative proof of fraternity in the Douglas Peerage case, in 1767, and again in the Townsend Peerage case, in 1843. Lord Mansfield said, in the former, that he had always considered likeness as an argument of a child being the son of a parent; that a man may survey ten thousand people before he sees two faces exactly alike, and that in an army of a hundred

thousand men, every man may be known from another; that if there should be a likeness in feature, there may be a difference in the voice, gesture, or other characters: whereas family likenesses run generally through all of these; for that in every thing there is a resemblance, as of feature, voice, attitude and action. Might he have not added the diathesis of the brain? He doubtless might, if the point had been mooted. In prosecutions for bastardy, the practice in the Quarter Sessions was, in my day, not exactly to give the child in evidence, but to put it before the jury, sometimes by the prosecutor, and sometimes by the putative father. But ancestral irregularity in the action of the brain is more frequently transmitted than any resemblance in form or feature; and it is difficult to imagine an objection to 'evidence for it for purposes of corroboration.'"(h)

§ 109. Taylor thus sums up the recent English cases on this point:—"In the case of *Reg. v. Ross Touchet*, 1844, tried and acquitted on the ground of insanity, for shooting a man, Maule, J., held that evidence that the grandfather had been insane may be adduced, after it had been proved by medical testimony that such disease is often hereditary in a family. It was also admitted in *Oxford's* case, the prisoner having been here tried for shooting at the Queen.(i) This kind of evidence has, however, been frequently rejected, and it is not admitted in the law of Scotland.(j) There can be no doubt, from the concurrent testimony of all writers on insanity, that a predisposition to the disease is frequently transmitted from parent to child through many generations. The malady may not always show itself in such cases, because the offspring may pass through life without being exposed to any exciting cause; but in general it readily supervenes from very slight causes."(k)

#### (4.) *Conversation and Deportment.* (kk)

§ 110. One or two cases will be sufficient to show the importance of accurate observation in this respect:—

A short time ago, a parish officer, from the neighborhood of Middleton, took a lunatic to the asylum, pursuant to an order signed by two magistrates. As the man was respectably connected, a gig was hired for the purpose, and he was persuaded that it was merely an excursion of pleasure on which he was going. In the course of the journey, however, something occurred to arouse the suspicions of the lunatic with

(h) *Smith v. Kramer*, 1 Am. Law Reg. 353.

(i) *Law Times*, Oct. 26, 1844.

(j) *Gibson's case*, Edinburgh, Dec. 1844.

(k) *Taylor's Med. Jur.*, p. 555.

(kk) On this point see *ante*, § 86-92.

"In a great majority of cases," says Dr. Wood, "insanity is produced by exciting causes acting upon a predisposition to the disease. *Inheritance* is the most frequent source of this predisposition,—perhaps more frequent than all others put together. Even a particular form of insanity is often inherited; and it has been noticed that the attack is apt to come on at the same period of life in the parent and his offspring. The tendency to suicide not unfrequently descends from parent to child. It is thought that children born before the occurrence of insanity in the parent are less liable to be affected than those born subsequently."—*Practice of Medicine*, by Prof. G. B. Wood, M. D., vol. II. p. 672. Phila., 1849.

According to the observations of Esquirol, more than a third (and perhaps the half) of the persons who become insane, count insane persons among their near relations, and thus at their birth bring on an hereditary predisposition to the disease.—*Méd. Lég.*, Briand, p. 543. Paris, 1852.

respect to his real destination; but he said nothing on the subject, made no resistance, and seemed to enjoy his jaunt. When they arrived at Lancaster, it was too late in the evening to proceed to the asylum, and they took up their quarters for the night at an inn. Very early in the morning the lunatic got up and searched the pockets of the officer, where he found the magistrate's order for his own detention, which, of course, let him completely into the secret. With that cunning which madmen not unfrequently display, he made the best of his way to the asylum, saw one of the keepers, and told him that he had got a sad mad fellow down at Lancaster, whom he should bring up in the course of the day, adding: "He's a very queer fellow, and he has got very odd ways. For instance, I should not wonder if he was to say I was the madman, and that he was bringing me; but you must take good care of him, and not believe a word that he says." The keeper, of course, promised compliance, and the lunatic walked back to the inn, where he found the officer still fast asleep. He awoke him, and they sat down to breakfast together. "You're a lazy fellow to be sleeping all day; I have had a long walk this morning," says the lunatic. "Indeed," says the officer, "I should like to have a walk myself after breakfast; perhaps you will go with me?" The lunatic assented, and after breakfast they sat out, the officer leading the way toward the lunatic asylum, intending to deliver his charge; but it never occurred to him to examine whether his order was safe. When they got within sight of the asylum the lunatic exclaimed,—“What a fine house that is!” “Yes,” said the officer, “I should like to see the inside of it.” “So should I,” observed the lunatic. “Well, I dare say they will let us through,—I will ask,” was the response. They went to the door; the officer rang the bell, and the keeper whom the lunatic had previously seen, made his appearance, with two or three assistants. The officer then began to fumble in his pockets for the order, when the lunatic produced it, and gave it to the keeper, saying: “This is the man of whom I spoke to you about. You will take care of him; shave his head, and put a straight waistcoat on him.” The men immediately laid hands on the poor officer, who vociferated loudly that the other was the madman, and he the officer; but, as this only confirmed the story previously told by the lunatic, it did not at all tend to procure his liberation. He was taken away, and became so indignantly furious that the straight-waistcoat was speedily put upon him, and his head was shaved, *secundum artem*. Meanwhile, the lunatic walked deliberately back to the inn, paid the reckoning, and set out on his journey homeward. The good people in the country were, of course, surprised on seeing the wrong man return; they were afraid that the lunatic, in a fit of phrensy, had murdered the officer, and they asked him, with much trepidation, what he had done with Mr. Stevenson. “Done with him?” said the madman, “why, I left him at the Lancaster Asylum, as mad as a fury!” which, indeed, was not very far from the truth; for the wits of the officer were well nigh upset by his unexpected detention and subsequent treatment.

Further inquiry was forthwith made by his neighbors, and it was ascertained that the man was actually in the asylum. A magistrate's order was produced for his liberation; and he returned home with a

handkerchief tied round his head in lieu of the covering which nature had bestowed upon it. (l)

§ 111. A man mentioned by Pinel, who had been for some time confined in the Bicêtre, was, on the visitation of a commissary, ordered to be discharged as perfectly sane, after a long conversation in which he had conducted himself with the greatest propriety. The officer prepared the *procès verbal* for his discharge, and gave it to him to put his name to it, when he subscribed himself Jesus Christ, and then indulged in all the reveries connected with that delusion. Lord Erskine gives a very remarkable history of a man who indicted Dr Munro for confining him without a cause in a madhouse. He underwent the most rigid examination, by the counsel of the defendant, without discovering any appearance of insanity, until a gentleman came into court who desired a question to be put to him respecting a princess with whom he had corresponded in cherry-juice. He immediately talked about the princess in the most insane manner, and the cause was at an end. But this having taken place in Westminster, he commenced another action in the city of London, and on this occasion no effort could induce him to expose his insanity; so that the cause was dismissed only by bringing against him the evidence taken at Westminster. On another occasion, Lord Erskine examined a gentleman who had indicted his brother for confining him as a maniac, and the examination had gone on for great part of a day without discovering any traces of insanity. Dr. Sims then came into court, and informed the counsel that the gentleman considered himself as the Saviour of the world. A single observation, addressed to him in this character, showed his insanity, and put an end to the cause. Many similar cases, says Abercrombie, are on record. Several years ago, a gentleman in Edinburgh, who was brought before a jury to be cognosed, defeated every attempt of the opposite counsel to discover any traces of insanity, until a gentleman came in court, who ought to have been present at the beginning of the case, but had been accidentally detained. He immediately addressed the patient by asking him what were his latest accounts from the planet Saturn, and speedily elicited ample proofs of insanity. (ll)

M. Orfila states, that deranged persons who are conscious of their condition, and who yet preserve some control over themselves, will answer correctly all questions that are addressed them, and will not betray their condition if they have an interest in concealing it. (m)

(5.) *Nature of the Act.*

(a.) *Its Insensibility.*

§ 112. "In foro medico," as is well remarked by Schürmayer, (n) "a

(l) Manchester, (England,) Guardian.

(ll) Abercrombie on the Intellectual Powers, pp. 253, 254; see also § 86-92.

(m) Méd Lég., M. Orfila. Tome I. p. 396. Paris, 1848.

(n) Gerichtliche Medicin, § 522.

derangement of the mental faculties is generally to be presumed where the consciousness, imagination, or sensual apperception or impulse, when subjected to common and usual provocations, internal or external, respond in a manner different from what they would in a normal state. But whether a certain action, undergoing a criminal investigation, was the effect of a diseased mental activity of the subject, and committed when he was not master of himself, is a question to be answered primarily from the indicia presented by the action itself, and then from the results of an examination of the accused, in reference to his physical, moral, and mental condition before, at, and after the deed in question. Illustrations of acts whose *insensibility* can be received to show their irresponsibility or incompetency of the actor, may be found in the old law cases of a legacy to the King of Siam, and of an executory devise to all the children in a particular parish who should, in a specific year, be born with moles on their faces. The presumption of irresponsibility would, of course, attach with great force under similar circumstances, to criminal acts equally insensible, as in the case of the idiot who was found putting an infant brother into the pot to boil for dinner."

(b.) *Its Incongruity with Antecedents.*

§ 113. When a man of uniformly mild character boldly and openly commits a deed of blood,—when a woman of previous purity gives way to lasciviousness,—when a long course of irreproachable honesty and exactness is suddenly broken in by profligacy; or domestic peace, by unprovoked ebullitions of violence, or by expressions of distrust to those formerly most loved or most trusted,(o) it is proper to consider how far unsoundness of mind may not be considered as the cause. Illustrations of this species of change will hereafter be noticed in other connections. It should be observed that *omission to fly* is a very important ingredient to make up this species of presumption.(p) It should be observed, also, that a man of unsound mind generally chooses the most injudicious time and place for the perpetration of the act, although the cunning and address with which an offence was committed, do not exclude the supposition of derangement,(q) and repels with indignation every intimation of his insanity; in many cases asserting that he committed the crime with perfect consciousness, and when entirely in his senses, and disregarding all that is said to extenuate it.(r)

M. Falret thus speaks of the change of character, which is a prominent symptom of commencing insanity:—Sometimes instead of a simple exaggeration, it is a veritable transformation that the character undergoes. Avarice gives place to prodigality, piety to irreligion, modesty to obscenity, temperance to drunkenness, the love of truth to deceit, the most tender and tried affections to indifference and even hate.(rr)

(o) See also, *Médecine Légale*, par M. Orfila. Tome I. p. 389. Paris, 1848.

(p) 2 Mittermaier *Deutsch St.*, § 12. *Wills on Circumstantial Ev.* 70. *Best on Presump.*, 322. *Wharton's Cr. Law*, (3rd ed.,) 332, 333.

(q) See *Méd. Lég.* J. Briand. p. 553. Paris, 1852; and see *ante*, § 60, 61.

(r) Compare Friedrich, *Handbuch der gerichtsaertztlichen Praxis*. Vol. I. p. 370.

(rr) See *ante*, § 106.

A frequent result is the neglect of the duties due to family and society, disorder of conduct and derangement of affairs, and those ebullitions of irritation and violence which momentarily, and sometimes for ever destroy the harmony existing between relations and friends.(s) The changes of conduct observable, in the incubation of mental diseases, are infinite, the deranged show a neglect or an unaccustomed zeal for their customary occupations, and for the cares and attentions of family, and for social customs and duties. Patients who were before sedentary in their habits, indulge in long absences from their dwellings. Some show an indifference and neglect for the persons and things they loved the most, and seek after objects which they did not like. Others overwhelm you with demonstrations of obligingness and devotedness. Generally those thus affected are absent and forgetful, they do not remember what they have done or what they were about to do an instant before, and then seem much surprised when these frequent absences of mind are pointed out to them. Their conduct abounds in contrasts. Those who were orderly become dissipated; those who were careful in business, now enter upon the most dangerous speculations, and they addict themselves to play, drinking and sexual excesses, and in fact to all the vices which were before unknown to them.(ss)

(c.) *Its Motivelessness.*(t)

§ 114. "It is assumed or implied," says Dr. Taylor with great justice, "that sane men never commit a crime without an apparent motive, or one of delusive nature only in the perpetration of a criminal act. If these positions were true it would be very easy to distinguish a sane from an insane criminal, but the rule wholly fails in practice. In the first place, *non-discovery* is here taken as a proof of the *non-existence* of a motive; while it is undoubted that motives may exist for many atrocious criminal acts without our being able to discover them—a fact proved by the numerous recorded confessions of criminals before execution, in cases of which, until these confessions were made, no motive for the perpetration of the crime had appeared to the acutest minds. In the case of *Courvoisier*, who was convicted of the murder of Lord William Russell, in June, 1840, it was the reliance upon this alleged criterion before the secret proofs of guilt accidentally came out, and led many to believe he could not have committed the crime; and the absence 'of motive' was urged by his counsel as the strongest proof of the man's innocence. It was ingeniously contended, 'that the most trifling action of human life had its spring from some motive or other.' This is undoubtedly true, but it is not always in the power of man untainted with crime to detect and unravel the motives which influence criminals to the perpetration of murder. No reasonable motive was

(s) See *post*, § 204.

(ss) *Leçons Cliniques sur l'aliénation Mentale*, M. Falret. 8th Leçon. p. 215. Paris, 1854. *Post*, § 204. See *ante*, § 106.

(t) *Médecine Légale*, J. Briand. p. 548-49. Paris, 1852. Pinel, *Aliénation Mentale*, p. 157. *Etudes Médico-Psychologiques sur l'aliénation Mentale*, par L. F. E. Renaudin. Paris, 1854. Chap. 18th, p. 779. See also *Leçons Cliniques de Médecine Légale*, M. Falret, Leçon 2d, p. 55-67. Paris, 1854. Also *Médecine Légale*, par Orfila. Tome I. p. 304. Paris, 1848.

ever discovered for the atrocious murders and mutilations perpetrated by *Greenack* and *Good*; yet these persons were very properly made responsible for their crimes. On the trial of Francis for shooting at the Queen, the main ground of the defence was, that the prisoner had no motive for the act and therefore he was irresponsible; but he was convicted. It is difficult to comprehend under what circumstances any motive for such an act as this could exist; and therefore the admission of such a defence would have been like laying down the rule, that the evidence of the perpetration of so heinous a crime should, in all cases, be taken as a proof of the existence of an irresponsible state of mind. Crimes have been sometimes committed without any apparent motive, by sane individuals who were at the time perfectly aware of the criminality of their conduct. No mark of insanity or delusion could be discovered about them, and they had nothing to say in their defence. They have, however, been very properly held responsible. On the other hand, lunatics confined in a lunatic asylum have been known to be influenced by motives in the perpetration of crimes. Thus they have often murdered their keepers in revenge for ill treatment which they have experienced at their hands.<sup>(u)</sup> Thus Farmer was acquitted as insane, while the clear motive for homicide was revenge and ill-feeling. In another case the act of murder was perpetrated from jealousy.<sup>(v)</sup> On the whole, the conclusion with respect to this assumed criterion is, that an absence of motive may, when there are other strong evidences of insanity, favor the view of irresponsibility for crime; but the non-discovery of a motive for a criminal act cannot of itself be taken as any proof of the existence of homicidal monomania in the perpetrator. It is right to state, however, that the law invariably acts on the humane principal, that the absence of a sufficient motive forms a strong presumption of innocence—the presence of one is no proof of guilt.”<sup>(w)</sup>

(d). *Its Inconsequentiality.*

§ 115. Of this an illustration may be found in the case of the madman mentioned by Hitzig, who occupied himself with incessant and anxious labor in rowing an imaginary boat. He never, alas! reached the shore towards which he so toiled, until death released him from his labors; and the last pulse of life was given to a tremulous, and, then, scarcely perceptible movement of the spectral oars.

III. FROM WHAT MENTAL UNSOUNDNESS IS TO BE DISTINGUISHED.

1st. *Emotions.*<sup>(x)</sup>

Briand says, that from the height of passion to madness is but one step, but it is precisely this step which impresses upon the act com-

<sup>(u)</sup> See the case of the Queen *v.* Farmer. York Spring Assizes, 1837.

<sup>(v)</sup> Reg. *v.* Goule. Durham Summer Assizes, 1845.

<sup>(w)</sup> Taylor's Med. Jurisprudence, p. 578, 579.

<sup>(x)</sup> See particularly Aristotle's delineation of the Passions in the Second Book of his "Rhetoric;" and see also L. Kraemer, Handbuch der gericht. Med. Halle, C. A. Schwetschke, 1851, § 126.



mitted a distinct character. It is important then to know exactly the precise characteristics of the passions and of insanity. But here science fails, for it must be admitted that we are unable to point out the place where passion ends or where madness commences.<sup>(y)</sup> M. Orfila draws the following distinction between a man acting under the impulse of the passions and one urged on by insanity. The mind is always greatly troubled when it is agitated by anger, tormented by an unfortunate love, bewildered by jealousy, overcome by despair, humbled by terror or corrupted by an unconquerable desire for vengeance, etc. Then, as it is commonly said, a man is no longer master of himself, his reason is affected, his ideas are in disorder, he is like a madman. But, in all these cases, a man does not lose his knowledge of the real relation of things, he may exaggerate his misfortune, but this misfortune is real, and if it carries him to commit a criminal act, this act is perfectly well motivated. Insanity is more or less independent of the cause that produced it; it exists of itself; the passions cease with their cause, jealousy disappears with the object that provoked it, anger lasts but a few moments in the absence of the one who by a grievous injury gave it birth, etc. Violent passions cloud the judgment, but they do not produce those illusions which are observable in insanity. They excite for a moment sentiments of cruelty, but they do not produce that *deep moral* perversion which influences the madman to sacrifice, *without motive*, the being he most cherishes.<sup>(z)</sup>

(1.) *Remorse.*

§ 116. "When remorse," says Cogan, "is blended with the fear of punishment, and rises to despair, it constitutes the supreme wretchedness of the mind."<sup>(a)</sup> And of all stages of passion, remorse is the one most liable, when the conscience is acute, to be mistaken for insanity itself. Of this we have a very melancholy case in our own local experience. A young gentleman of peculiarly nice sense of honor and keen sensibility, killed an intimate and beloved friend in a duel, hastily forced on by his own undue susceptibility. For twenty years he has never ceased to stride to and fro the chamber in which he has been confined, firing an imaginary pistol at intervals, and then throwing himself back with the acutest expression of misery. In this instance remorse has run into madness. In others it has made but a slight progress in that direction; in others entire sanity and responsibility remain. And yet in all it presents symptoms which it is well for the forensic physician to examine in relation to their moral as well as their psychical origin.

Harfsfield, in his *Ecclesiastical History*, gives us the following graphic report of the dying words of *Cardinal Beaufort*, which is a powerful illustration of the effect of this passion: "And must I then die! Will not all my riches save me? I could purchase the kingdom, if that would save my life. What! is there no bribing of death? When my nephew, the Duke of Bedford died, I thought my happiness and my

<sup>(y)</sup> Méd. Lég. p. 551. Paris, 1852.

<sup>(z)</sup> Méd. Lég. Tome I. p. 407. Paris, 1848.

<sup>(a)</sup> Cogan on the Passions, Vol. I. chap. 2. sec. 3.

authority greatly increased: but the Duke of Gloucester's death raised me in fancy to a level with kings, and I thought of nothing but accumulating still greater wealth, to purchase at last the triple crown. Alas! how are all my hopes disappointed! Wherefore, O my friends, let me earnestly beseech you to pray for me, and recommend my departing soul to God!" A few minutes before his death his mind appeared to be undergoing the tortures of the damned. He held up his two hands, and cried—"Away! Away! why thus do ye look at me?" This same scene in the Cardinal's life is thus still more vividly depicted by Shakspeare:

SCENE—*The Cardinal's bed-chamber.*

*Enter King Henry, Salisbury and Warwick.*

- King Hen.* How fares my lord? speak, Beaufort, to thy sovereign,  
*Cardinal.* If thou be'st death, I'll give thee England's treasure,  
 Enough to purchase such another island,  
 So thou wilt let me live, and feel no pain.
- King Hen.* Ah, what a sign it is of evil life,  
 When death's approach is seen so terrible!
- Warwick.* Beaufort, it is thy sovereign speaks to thee.
- Cardinal.* Bring me unto my trial when you will,  
 Died he<sup>(b)</sup> not in his bed? where should he die?  
 Can I make men live, wher' they will or no?—  
 O! torture me no more, I will confess.—  
 Alive again? then show me where he is;  
 I'll give a thousand pounds to look upon him.—  
 He hath no eyes, the dust hath blinded them.—  
 Comb down his hair; look! look! it stands upright,  
 Like lime-twigs set to catch my winged soul!—  
 Give me some drink; and bid the apothecary  
 Bring the strong poison I bought of him.
- King Hen.* O thou eternal Mover of the heavens,  
 Look with a gentle eye upon this wretch!  
 O, beat away the busy meddling fiend,  
 That lays strong siege unto this wretch's soul,  
 And from his bosom purge this blaek despair!
- Warwick.* See, how the pangs of death do make him grin.
- Salisbury.* Disturb him not, let him pass peaceably.
- King Hen.* Peace to his soul, if God's good pleasure be!  
 Lord cardinal, if thou think'st on heaven's bliss,  
 Hold up thy hand, make signal of thy hope.—  
 He dies and makes no sign; O God, forgive him!
- Warwick.* So bad a death, argues a monstrous life.
- King Hen.* Forbear to judge, for we are sinners all.  
 Close up his eyes, and draw the curtain close;  
 And let us all to meditation.(c)

M. Guillon relates the following remarkable ease: "The Chevalier de S—— had been engaged in seventeen 'affairs of honor,' in each of which his adversary fell. But the images of his murdered rivals began to haunt him night and day: and at length he fancied he heard nothing but the wailings and upbraidings of seventeen families—one demanding a father, another a son, another a brother, another a husband, &c. Harassed by these imaginary followers, he incarcerated himself in the monastery of La Trappe; but the French revolution threw open this asylum, and turned the Chevalier once more into the world. He was

(b) Meaning the Duke of Gloucester.

(c) King Hen. VI. part ii. Act 3.

now, no longer able to bear the remorse of his own conscience, or, as he imagined, the sight of seventeen murdered men, and therefore put himself to death. It is evident that insanity was the consequence of the remorse, and the cause of the suicide.<sup>(d)</sup>

§ 117. Schürmayer's<sup>(e)</sup> views on this point are of peculiar interest, as indicating the conservative jealousy with which the continental authorities guard against that involuntary dissimulation on the patient's part which makes *real*, and yet at the same time *responsible* emotions so difficult to distinguish from *irresponsible* disease. "Remorse," he says, "often affects the mind so powerfully, as to assume the appearance of insanity. The smothered self-reproach of the criminal sometimes expresses itself in the shape of deep *dejection*, and sometimes in that of *petulance* and irritability. Almost every defendant who is guilty, will be seen to lapse at least periodically into a deep reverie, with the eyes staring into vacancy. The most consummate villains alone are exempt from such feelings. Criminals generally endeavor to suppress the voice of conscience, because they fear to be betrayed by it. But this very reaction is perfectly legible in their faces, gestures, and general bodily condition. Under these circumstances the qualms of conscience frequently assume the appearance of disease. The accused, particularly if in confinement, does not sleep at night for weeks, and consequently looks pale and haggard, loses his appetite, and speaks with hesitation, and sometimes with trembling. When this condition reaches a point of great intensity, the guilty is visited by visions and hallucinations; avenging angels appear to him, or evil spirits, phantoms, or the shades of the dead and injured. Add to this a little superstition, and the victim is firmly convinced of the reality of these apparitions, and regards them as punishments sent from heaven. In the course of the trial itself, these symptoms are less perceptible; and generally the culprit hesitates to tell an official person what he suffers in seclusion, but the struggle within frequently breaks out in spite of his efforts, or at least interferes with the coherence of his speech. In such cases a man, perfectly hale in mind and body, will frequently talk at random, or at least express himself in so confused and stupid a manner as to induce doubts of his sanity. It is remarkable, that those who confess their guilt are subject to these attacks equally with those who deny it. It might be supposed that the criminals who have made a public confession, would experience a regenerating sense of relief in consequence of having removed a load from their minds; but the confession often precedes the first sensations of remorse, by directing the attention to the moral and religious aspects of the deed.

"This proves that even a confessed criminal should be treated with great circumspection. Instead of overwhelming him with reproaches, the victory gained by his integrity over his fears, should be held up to himself as a restorer of self respect.

"The more depraved order of culprits do not allow their consciences to drive them to despair, but only to *petulance*; but even this frame of mind sometimes goes so far as to lead the subject to do the most incom-

(d) Winslow's Anatomy of Suicide, pp. 53, 54.

(e) See Gericht. Med. § 519.

prehensible things, such as asserting things against reason, refusing to answer, or causing constant trouble and vexation in the prison. Such persons are often greatly misunderstood, sometimes by ascribing their offensive conduct solely to malice and spite, and sometimes by regarding them as demented, when, driven by their chagrin, they lose all reflection, and say or do things to their own injury. The consciousness of crime, coupled with the despair of expiation consequent upon having denied it, produce an internal schism which may result in the most singular and distracting phenomena.

“A tolerably sure criterion of an awakened conscience is often to be found in the desire of the culprits for some consolatory assurance. Even those who deny their guilt are generally anxious to know how they would be able to bear the condition of a criminal, sentenced according to law. In many cases there is an exaggerated idea of the impending punishment, still further increased by the imaginings which haunt the prisoners solitude. When such erroneous notions come to the knowledge of the examining physician, it is perfectly right in him to correct them, and the information thus imparted will generally produce a change of feeling which must at once dispel every idea of mental derangement.”(f)

## (2.) Anger.

§ 118. “Anger,” says Archbishop Tillotson,(g) an authority not distinguished for undue poignancy of description, “is a *short fit of madness*, and he that is passionate and furious deprives himself of his reason, spoils his understanding, and helps to make himself a fool.” And Dr. Cogan, while more exact, is not much less emphatic: “Anger is the strong passion or emotion, impressed or excited by a sense of injury received or in contemplation; that is, by the idea of something of a pernicious nature and tendency, being done or intended, in violation of some supposed obligation to a contrary conduct.”(h)

§ 119. “A morbid paroxysm of anger,” Dr. Rush tells us, “appears in a preternatural determination of the blood to the brain, a turgescence of the blood-vessels of the face, a redness of the eyes, an increased secretion of saliva, which is discharged by foaming at the mouth, great volubility or a total suppression of speech, agitations of the fists, stamping of the feet, uncommon bodily strength, convulsions, hysteria, bleeding at the nose, apoplexy and death. Sometimes this disease appears with paleness, tremors, sickness at the stomach, quick respiration, puking, syncope and asphyxia. It is in this case generally combined with fear, and hence arises the abstraction of blood from the brain, and its determination to other parts of the body.”(i)

“Anger,” says Dr. Millingen, “will vary in its symptoms according to our temperament. Thus we may observe what is called *red anger* and *pale anger*. The first is of a violent and explosive nature; it generally affects the sanguineous; the circulation of the blood is accelerated—the breathing is difficult and panting—the features flushed—the

(f) Schürmayer, Gericht. Med. § 519.

(h) Cogan on the Passions. Vol. I. p. 113.

(g) Works. Vol. I. ser. 4.

(i) Rush on the Mind, p. 332.

swollen veins are visibly enlarged under the integuments—the eyes flash fire, and become injected with blood—the lips contracted expose the teeth—the voice becomes hoarse—the hearing difficult—foam will occasionally issue from the mouth; in short, the features assume the character of mania, arising evidently from a congestion of blood on the brain; and under the violence of the paroxysm the angry man will know no restraint, and is indeed, for the time being, a maniae, indiscriminate in his fury and perfectly uncontrollable. Such was the case of Charles VI. of France, who, being violently incensed against the Duke of Bretagne, and burning with a spirit of malice and revenge, could neither eat, drink, nor sleep, for many days and nights, and at length became furiously mad; as he was riding on horseback, drawing his sword and striking promiscuously every one who approached him. During this paroxysm of anger the violence of an infuriated man is such that he will break and destroy every thing about him. On this subject Dugald Stewart has entertained a singular notion, and fancied that in these outrageous acts, the angry man thinks that the inanimate objects that he attacks are alive. The following are his words:—‘The disposition which we sometimes feel, when under the influence of instinctive resentment, to wreak our vengeance upon inanimate objects, has suggested to Dr. Reid a very curious query—whether, upon such an occasion, we may have a momentary belief that the object is alive? For my own part I confess my inclination to answer this question in the affirmative.’ Now, with all due respect to the opinion of these psychologists, daily experience proves the fallacy of this doctrine; for, although such furious persons may break and demolish pots and pans, bottles and glasses, chairs and tables, they rarely expend their fury on bystanders, who would not remain as quiet as crockery or furniture, but have recourse to retaliation, with capital and interest. True, such men may beat their wives and their children, but they are more cautious with strangers; and their outrageous conduct I consider as an indication of a cowardly desire to seek revenge, rather than a resentful spirit to avenge wrongs or insults; and these outbreaks are nothing more than a manifestation of power that mankind is ever proud of possessing and displaying. And I truly must again differ in opinion with the philanthropic Dugald Stewart, when he maintains that a man wishes to punish an offender with his own hands, owing to ‘a secret wish of convincing our enemy, by the magnanimity of our conduct, how much he had mistaken the object of his hatred.’ I must confess that I should feel much hesitation in exposing myself to this chance of a benevolent display of magnanimity, on the part of an infuriated person.”(j)

§ 120. And a still higher metaphysical authority, Dr. Reid, likens it to “a storm at sea, or a tempest in the air.”(k) “It does not, therefore, signify anything in the mind that is constant and permanent, but some-

(j) *Mind and Matter*, by J. G. Millingen, M. D., M. A. pp. 326–7–8.

(k) “*Sæpe, mihi hum amantæ meditantî incommoda vitæ,  
Spesque leves, trepidosque, metus vanosque labores,  
Gaudia que instabili semper fucata sereno,  
Non secus ac navis lato jactata profundo,  
Quam venti violensque æstus canusque magister  
In diversa trahunt,*” &c.—*Buchananus*.

Montaigne (says Sir William Hamilton,) alludes to these verses in the tenth chapter

thing that is occasional and has a limited duration, like a storm or tempest. Passion commonly produces sensible effects, even upon the body. It changes the voice, the feature, and the gesture. The external signs of passion have in some cases a great resemblance to those of madness; in others to those of melancholy. It gives often a degree of muscular force and agility to the body, far beyond what it possesses in calm moments. The effects of passion on the mind are not less remarkable. It turns the thoughts involuntarily to the objects related to it, so that a man can hardly think of anything else. It gives often a strange bias to the judgment, making a man quick-sighted in everything that tends to inflame his passion and to justify it, but blind to everything that tends to moderate or allay it. Like a magic lantern, it raises up scapes and apparitions that have no reality, and throws false colors upon every object. It can turn deformity into beauty, vice into virtue, and virtue into vice. The sentiments of a man under its influence will appear absurd and ridiculous, not only to other men but even to himself, when the storm is spent and succeeded by a calm. Passion often gives a violent impulse to the will, and makes a man do what he knows he shall repent as long as he lives. That such are the effects of passion I think all men will agree. They have been described in lively colors by poets, orators and moralists in all ages.<sup>(1)</sup> But men have given more attention to the effects of passion than to its nature; and while they have copiously and elegantly described the former, they have not precisely described the latter."

of his third book, but without naming his master. He has thus puzzled his commentators.

"Nubibus Atris  
 Condita Nullum  
 Fundere possunt  
 Sidera lumen  
 Si mere volvens  
 Turbidus Auster  
 Meseat æstum,  
 Vitrea dudum,  
 Parque serenis  
 Unda diebus,  
 Mox resolute  
 Sordida Cœno  
 Visibus Obstat.  
 Tu quoque, si vis  
 Lumine Claro  
 Cernere verum,  
 Tramite recto  
 Carpere callem:  
 Gaudia pelle,  
 Pelle timorem,  
 Spemque fugato,  
 Nee dolor adsit,  
 Nubila mens est,  
 Vinetaque fœnis  
 Hæc ubi regnant.—*Boethius.*

(1) Milton thus describes what Dr. Millingen calls *pale anger* :

"Thus, while he spake, each passion dimm'd his face,  
 Thrice charg'd with *pale ire*, envy, and despair,  
 Which marr'd his borrow'd visage, and betray'd  
 Him counterfeit."

Thompson has also depicted the same state :

"Senseless and deformed,  
 Convulsive anger storms at large, or *pale*  
 And *silent* settles into fell revenge."

§ 121. Schürmayer very justly remarks that in practice, *anger* and *revenge* afford much less difficulty, because much more readily distinguishable from insanity than is *remorse*. With the more depraved, experience tells us that that malignant hatred which led to crime, is often increased after the crime is committed, and is further aggravated by displeasure at the unfavorable testimony of witnesses. The fury of such miscreants is often directed against the judge, the keepers, and all who contribute to the execution of their sentence. In the case of Carigan, who was recently convicted in North Carolina for murder, so high did this temper run, that the defendant, immediately after the verdict of conviction was rendered, drew forth a pistol, with which he aimed a shot at the prosecuting attorney, and then shot himself.

In the fierce outburst of passion, it is quite possible to mistake a man under such circumstances for a madman, particularly where philanthropy predisposes the mind to doubt, and science and skill are not at hand to correct the first erroneous impressions. But these doubts will vanish if the examiner abstains from doing anything which may still further stimulate the passions, and preserves an imperturbable composure. If after this, a severe reprimand is found, either at once, or after one or two repetitions, to make a wholesome impression, and quell the excitement, there is certainly no derangement of the faculties; for a man with mania, or under the ravings of disease, will never be restored to self-control by the voice of reason. Where the man is very wild and debased, reproaches will not always answer the purpose, and it becomes necessary to menace him with coercion. The manner in which such announcements are received will also suffice to remove all doubts of his sanity.

### (3.) *Shame.*

§ 122. The feeling of *shame* may also exert a very considerable influence on the demeanor of an accused man, not entirely lost to this sensation by a long course of vice. Shame rises and sinks with the feeling of honor; "shame is the disagreeable perception of the unfavorable opinions entertained of us by others." Men of ordinary stamp, who value external honor far above the dignity of self-respect, can imagine no more dreadful fate than degradation in the eyes of the public. By injudicious treatment such individuals may be reduced to a state closely resembling insanity, particularly in the form of melancholy, which will disappear the moment a more judicious course is resorted to.

It is not necessary for us, in order to make out the similarity of symptoms between insanity and excessive shame, to find many parallels to the story told by Dr. Benton, and cited without protest by Dr. Rush, of a school-master who was accidentally discovered upon a close-stool by one of his scholars, and who in consequence became deranged.<sup>(m)</sup>

§ 123. Dr. Rush also tells us of an American Indian, who became deranged and destroyed himself, in consequence of seeing his face in a looking-glass soon after his recovery from a violent attack of small-pox. The loss of one eye by an affray in a country tavern, which ma-

(m) Rush on the Mind, p. 38.

terially affected the beauty of the face, produced derangement in a young man who was afterwards a patient in the Pennsylvania Hospital. There are other facts which show the depth of this attachment to beauty, in the human mind, and the poignancy of the distress occasioned by its loss or decay. The once beautiful Lady Wortley Montague tells a friend, in one of her letters, that she had never seen herself in a looking-glass for eleven years, solely from her inability to bear the mortifying contrast between her appearance in the two extremes of her life. A clergyman in Maryland became insane in consequence of having permitted some typographical errors to escape, in a sermon which he had published on the death of General Washington.(n)

A young gentleman of considerable promise, of high natural and acquired attainments, had been solicited to make a speech at a public meeting, which was to take place in the town in which he resided. As he had never attempted to address extemporaneously a public body, he expressed himself extremely nervous as to the result, and asked permission to withdraw his name from the published list of speakers. This wish was not, however, complied with, as it was thought that when the critical moment arrived he would not be found wanting even in the art of public speaking. He had prepared himself with considerable care for the attempt. His name was announced from the chair: when he rose for the purpose of delivering his sentiments. The exordium was spoken without any hesitation; and his friends felt assured that he would acquit himself with great credit. He had not, however, advanced much in his prefatory observations when he hesitated, and found himself incapable of proceeding. He then sat down, evidently excessively mortified. In this state he retired to a room where the members of the committee had previously met, and cut his throat with his penknife. He wounded the carotid artery, and died in a few minutes.(o)

#### (4.) *Grief.*

§ 124. Shakspeare very touchingly as well as naturally describes the symptoms of that species of morbid grief which becomes monomaniac by self-confinement and self-involution:

“Grief fills up the room of my absent child;  
Lies in his bed, walks up and down with me;  
Puts on his pretty looks, repeats his words;  
Remembers me of all his gracious parts;  
Stuffs out his vacant garments with his form;  
*Then I have reason to be fond of grief.”*

“Physicians,” says Dr. Rush, “in their unsuccessful efforts to save life, are often obliged to witness this passion. It is of consequence for them, therefore, to be well acquainted with its symptoms and cure. Its symptoms are acute and chronic. The former are, insensibility, syncope, asphyxia, and apoplexy; the latter are fever, wakefulness, sighing, with and without tears, dyspepsia, hypochondriasis, loss of memory, gray hairs, marks of premature old age in the countenance, catalepsy, and madness. It sometimes brings on sudden death, without any signs of

(n) Rush on the Mind, p. 40.

(o) Winslow's Anatomy of Suicide, p. 64.



previous disease, either acute or chronic. Dissections of persons who have died of grief, show congestion in, and inflammation of the heart, with a rupture of its auricles and ventricles.<sup>(oo)</sup> But there are instances in which the sympathy of the heart with the whole system is so completely severed with grief, that the subject of it discovers not one mark of it in his countenance or behaviour. On the contrary, he sometimes exhibits signs of unbecoming levity in his intercourse with the world. This state of mind soon passes away, and is generally followed by all the obvious and natural signs of the most poignant and durable grief. There is another symptom of grief which is not often noticed, and that is profound sleep. I have often witnessed it, even in mothers, immediately after the death of a child. Criminals, we are told by Mr. Akerman, the keeper of the Newgate, in London, often sleep soundly the night before their execution. The son of General Custine slept nine hours the night before he was led to the guillotine, in Paris. These facts, and many similar ones that might be mentioned, will serve to vindicate the disciples of our Saviour for a want of sympathy with him in his suffering. They slept during his agony in the garden, because their "flesh was weak," and in consequence of "sorrow having filled their hearts."<sup>(p)</sup>

Tears, or the capacity to weep, form no test in this respect. "How often," very beautifully says Dr. Cheyne,<sup>(pp)</sup> "have we, in passing through this vale of tears, heard the following lament: 'Oh, that I could only cry! I feel as if it would so relieve me! There seems nothing natural in my grief. I, who wept so bitterly for my father, have not a single tear to shed for my child.' This tearless state sometimes remains to the very end of life; and we may hear individuals, who were originally possessed of the liveliest affections, declare: 'Ever since my husband, son, or daughter died, my affections have been frozen, and my eyes dried up.' It is very generally observed, when the first bitterness of grief is overpast—when the more violent, selfish, or ecstatic stage of the passion has had time to subside—that tears will again begin to flow."

One distinction, however, may be relied on with almost certainty. Grief may be, in most cases, relieved by the counter-irritation of some affection other than that wounded; but *insanity* never. Bishop Jebb, in his one hundred and thirty-ninth letter to Mr. Knox, very touchingly illustrates this: "Mr. Wilberforce one day proposed to take me out to pass next Tuesday with our valuable friend, Mrs. H. Thornton, at Clapham. I most gladly embraced the offer. She was much affected, and spoke freely to me about her feelings. At first she had been reduced to a state of inert grief, which would have made her willingly lie down in the same bed with him that was just gone, and die with him. A sense of affection and duty to her children soon roused her from this torpor, and she then felt, and continued many days to feel, as if she were in heaven. This high-wrought feeling, however, could not long remain, and nature since has had its griefs and tears." "On this passage," says Dr. Cheyne, "we would offer the following

<sup>(oo)</sup> Late researches, however, indicate such cases to be very exceptional.

<sup>(p)</sup> Rush on the Mind, p. 346, 347.

<sup>(pp)</sup> Cheyne on Derangement in Connection with Religion, p. 107.

short observation. By the 'inert' state of her grief, we understand that, though it was profound, so that she willingly would have died with her husband, yet that it was without its natural expression; there was no wailing. Then another affection was roused, and that assurance of Divine protection, which is the inheritance of the servants of God, filled her mind with gratitude and joy. Lastly, as the ecstasy subsided, and when her anguish was exhausted, nature had its 'griefs and tears.' It is always desirable that tears should come to the relief of the deeply afflicted; and it is easier to allow the first gush of grief to be over, before we attempt, by religious consideration, to moderate its poignancy."

(5.) *Home-sickness (Nostalgia).*(q)

§ 125. This often assumes a shape hardly distinguishable from *Hysteria*. Thus Goldsmith writes:—

"The intrepid Swiss that guards a foreign shore,  
Condemn'd to climb his mountain-cliffs no more,  
If chance he hear the song, so sweetly wild,  
Which, on these cliffs, his infant hours beguil'd  
Melts at the long-lost scenes, that round him rise,  
And sinks a martyr to repentant sighs."

"It is remarkable," says Dr. Rush, "that this disease is most common among the natives of countries that are the least desirable for beauty, fertility, climate, or the luxuries of life. They resemble, in this respect, in their influence upon the human heart, the artificial objects of taste which are at first disagreeable, but which from habit take a stronger hold upon the appetite than such as are natural and agreeable."(r)

§ 126. Nostalgia, as Siebold(s) tells us, develops itself principally in that period of childhood approaching puberty. When the malady is of long continuance, it runs into voluntary starvation, sleeplessness, delirium, derangement of the senses, together with the usual melancholy consequences of unsatisfied desire. Sometimes symptoms of Pyremania are discoverable. Thus we are told of a girl of ten years who exposed two children, committed to her care, to the flames, under the stress of home-sickness.(t)

2d. *Simulated Insanity.*(u)

§ 127. In every case, the examining physician will be led at once to inquire, whether the apparent abnormal state of mind is real or feigned.

(q) Orfila gives the following symptoms by which Nostalgia may be recognized: Profound sadness to which succeeds a gloomy melancholy, silence and a great desire to be alone, a great indifference for every thing which does not recall the objects regretted. Spasmodic contraction of the stomach, prostration of mind and body, marasmus, &c.—*Méd. Lég.* Vol. I. p. 331. Paris, 1848.

(r) Rush on the Mind, p. 38, 39.

(s) *Gericht. Med.* § 213.

(t) See *Jahrb. des Oesterreich Staates*, 15 Bd. 1834. § 597. See also the article under the head of *Heimweh*, by Jesse, in the *Encyclop. Wörterb. der Med. Wissensch.* Band 25. Berl. 1841. § 292.

(u) In relation to simulated insanity, M. Orfila says, that as there exists in the world a very false idea of madmen the one who simulates insanity, after this idea, will

One thing, however, must not be overlooked, and this is that impostors of this kind are but very rarely able to keep up the character of the disease assumed, with consistency, and without involving themselves in contradictions. It is important to adopt here the precautions prescribed by Schürmayer,<sup>(v)</sup> to watch the subject most closely when he supposes himself least observed, as at such times he generally drops his mask, which is irksome to him. In all such investigations the physician must never show the most trifling sign of doubt or hesitation; he must, on the contrary, appear to know everything, in order to discover everything, and must present a firm and imposing front in all his intercourse with the accused. Where the disease in question is of such a nature, as, if genuine, to interfere with or suspend sleep, it becomes necessary to watch the patient unobserved at night. To subject him purposely to mental irritation or excitement is improper, reprehensible, and liable to cause harm. Threats of painful medicines or operations are admissible where the processes threatened are really indicated by therapeutics, but the execution of such threats must depend upon the principles laid down in another part of this work, in reference to the tests applicable to feigned bodily diseases.

§ 128. Schürmayer gives us the following reasons for suspecting dissimulation or deception.

1. When the party has committed some act, the punishment of which he would escape by inducing a belief in his aberration of mind, in this case the comparison of the offence committed, with the form of mental disease assumed, will often suffice to confirm the suspicion.<sup>(w)</sup>

2. When the individual has frequently expressed an aversion to a particular occupation or profession it is expected to assume, as, for instance, that of a soldier.

3. When the general character of the party is open to imputations of malice and deceit.<sup>(x)</sup>

4. When it is impossible to discover any previous indications, physical or mental, of the pretended derangement of the mental faculties.<sup>(y)</sup>

§ 129. The species of mental unsoundness most frequently imitated by the vulgar as *delirium*—which, at the same time, is that which it is the most difficult to sustain. Sheridan, with his usual tact, hit upon

perform, at every instant, contradictory and false acts; thus, he will pretend not to remember his past actions, he will not recognize those whom he knows very well, he will not make a single correct reply to questions that are addressed to him. His features will not have the expression of such a violent condition, he cannot for so long a time prevent himself from sleeping, he will play the fool particularly whilst he thinks himself observed, finally, his pretended malady will not have developed itself until he feared the pursuit of justice; it will not have been preceded by that originality of character, by those marked symptoms of moral disorder which are observable in the majority of cases of insanity.—*Méd. Lég.*, Tome I. p. 400. Paris, 1848. See also *Méd. Lég.* J. Briand. p. 396. Paris, 1852. See on this point, *Principles of Medical Psychology*, being the outlines of a course of lectures by Baron Ernest von Feuchtersleben, M. D. Vienna, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by B. G. Babington, M. D., F. R. S., &c. London, printed for the Sydenham Society, 1847. p. 376.

(v) *Gericht. Med.*, § 392.

(w) Compare Heinroth, *System der psychisch gerichtlichen Medizin*. Leipzig, 1825. p. 453.

(x) Heinroth *Medizinische Zeichenlehre*. Ausgabe von Danz. Leipzig, 1812. p. 380.

(y) Friedreich, *Handbuch der gerichtlichen Psychologie*, p. 155.

this when he made the mock-author in the Critic throw his heroine into precisely this stage:—

*Enter* Tilburina and Confidant, mad, according to custom.

*Sneer.* But, what the deuce, is the confidant to be mad, too?

*Puff.* To be sure she is; the confidant is always to do what her mistress does; weep when she weeps, smile when she smiles, go mad when she goes mad. Now madam confidant—but keep your madness in the back-ground, if you please.

*Tilb.* . . . The wind whistles—the moon rises—see,  
 'They have kill'd my squirrel in his cage!  
 Is this a grasshopper?—Ha! no; it is my  
 Whiskerandos; you shall not keep him—  
 I know you have him in your pocket.  
 An oyster may be cross'd in love!—who says  
 A whale's a bird?—Ha! did you call, my love?—  
 He's here! he's there! He's everywhere!  
 Ah me! he's nowhere! [Exit.

*Puff.* There, do you ever desire to see any body madder than that?

*Sneer.* Never while I live!

*Puff.* You observed how she mangled the metre?

*Dang.* Yes—egad, it was the first thing made me suspect she was out of her senses!

*Sneer.* And pray, what becomes of her?

*Puff.* She is gone to throw herself in the sea, to be sure; and that brings us at once to the scene of action, and so to my catastrophe—my sea-fight, I mean.

It is much more easy to counterfeit imbecility in its lower stages, as inaction rather than *action* is then required.

§ 130. The physiognomy of mature madness, does not admit of imitation—though the ease is otherwise with imbecility. The demeanor of the individual under threats, or even under the application of painful remedies, is a criterion of inferior value, because skillful imposters withstand the test, and because many who are really affected, particularly before the disease has assumed a settled character, manifest fear and dread of such remedies, and retain, in a considerable degree, sensibility to pain. The torpor of the stomach and bowels under the use of emetics and purgatives is equally unreliable, because the same condition is found unconnected with unsoundness of mind; of greater value is sleeplessness, which a deceiver will not long sustain after the fashion of lunatics.(z)

§ 131. The shortest road to certainty(a) is by comparing the case in hand with those recorded or experienced, and by a strict application of the inductive tests. Experience teaches that the various abnormal conditions of the mind have certain symptoms in common, by means of which they admit of being arranged in greater and smaller subdivisions, and finally of being reduced to certain clearly defined forms and combinations of forms. Although every case, to a certain extent, furnishes its own rule, yet this logical process will be of great avail in detecting dissimulation, on the one hand, or groundless imputation of insanity, on the other. The more the phenomena of a case of alleged insanity subject to examination differ from recorded observations, or the more a person of dubious insanity presents an array of symptoms at variance with the form of the disease to which they ought to belong, the more reason is there to guard against deception.(b) At the same time, it must be admitted, that the science of psychical medicine has not attained such

(z) Schürmayer *Gericht. Med.* § 533. See also *ante*, § 100, 101.

(a) Ellinger *Ueber die anthropologischen Momente der Zurechnungsfähigkeit*, p. 97.

(b) Mare, *Die Geisteskrankheiten*, &c. Vol. I. p. 104.

a degree of perfection, as to exclude entirely the possibility of cases arising, which would not admit of being classed with any of those already observed and noted. At times they incline to mere moral perversity, and are often treated as such for years; or the disease itself is not yet clearly developed; or, finally, it has apparently ceased, or arrived at a stage in which the patient is able to control and direct his condition, as a drunkard his intoxication.(c)

§ 132. For various reasons, simulation is not always to be inferred from the absence of a trace of insanity at the time of the investigation.(d)

1. Patients, whose minds are unsound on one subject only, have the power of burying their madness in their own hearts, to such an extent as to betray no sign of derangement in the course of the examination; because it is not necessary that the disturbance of one mental function should impair the action of the others. There are many cases, which have been in part noticed, and some of which will appear in the course of the following pages, in which the sufferer is insane on one subject alone, while all the other operations of his mind proceed in their normal manner, so that any one unacquainted with the fixed idea which controls him, would pronounce him perfectly rational.(e)

2. It is established by experience, that lunatics, even when their disease is not that of monomania, enjoy intervals in which their understanding has not only its normal vigor, but even displays uncommon powers.(f)

3. A genuine mental disease may be suspended or removed by the very circumstance which give rise to the investigation, by analogy to the cases of madmen restored to health by great mental and moral shocks, as well as of persons attempting suicide from melancholy or despair, who are cured of their folly by the impressions received while making the attempt.(g)

§ 133. Another consideration which must never be lost sight of in investigations of the kind is this, that a pretended mental disease may turn into a real one.(h) A man who makes every effort to appear deranged, may be so much affected by his efforts, that what he pretends may assume a reality in his mind, and he become in fact insane.(i) In conclusion, there is also a class of cases in which genuine paroxysms of madness alternate with pretended ones, which calls for especial caution in pronouncing upon them.(j)

§ 134. There are persons of unsound mind, who, in the incipient

(c) Schürmayer, *Gericht. Med.* § 533.

(d) Compare Friedreich, p. 165.

(e) Compare Wagner, *Beitragce zur philosophischen Anthropologie*. Vienna, 1794. Vol. I. p. 114. Perfect, *Annalen einer Anstalt für Wahnsinnige*. Hanover, 1084. p. 341. Esquirol, *Note sur la monomanie homicide*. Paris, 1837. p. 3.

(f) Muratori, *Ueber die Einbildungskraft*. Leipsic, 1785. Vol. II. p. 8. Reil's *Rapsodien*, p. 76.

(g) *Etudes Medico Psychologiques sur l'alienation Mentale*, par L. F. E. Renaudin. Chap. IX. p. 522. Paris, 1854.

(h) For an interesting essay on Monomania induced by Imitation, see 1 *Am. Journ. of Insan.*, 116.

(i) *Ibid.* p. 172.

(j) Compare Neumann, *Die Krankheiten des Vorstellungsvermögens*. Leipsic, 1822. p. 397. And Pyc, *Aufsätze, &c. aus der gerichtlichen Arzueiwissenschaft*, Third series, p. 219. And see particularly Schürmayer, § 535, whence the above observations are drawn.

stages of the disease retain sufficient consciousness to endeavor, for various reasons, to conceal their malady. A continued attentive observation of such individuals will, however, suffice, in general, to furnish the data for a correct view of the case. But even in cases of confirmed insanity, an *occult condition*, so-called, may occur, in which the madman tries and manages to conceal his ailment, or rather his impulses, fancies, and feelings. This is particularly frequent in lucid intervals and in partial insanity. *(k)* Under such circumstances, in addition to the maxims adduced under the head of dubious cases, the following suggestions will be found useful. To interrogate the patient directly to the point is of very little avail, for if he is anxious to conceal his madness, any questions will inspire him with a suspicion of the questioner which must frustrate all such efforts. More circuitous means are preferable.

1. By bringing the patient into a succession of different relations of life, and regarding closely the effect produced upon him, some indications of his fixed ideas may be made to escape him. If the subject of his lunacy is thus brought into question, by contradicting his views in connection with it, the perversion of his intellect will be doubly apparent. *(kk)*

§ 135. 2. Amelung's advice is to furnish the party with pen, ink, and paper, and induce him, under some pretext or other, to write; he will not be able to refrain from setting down something which will throw more or less light on the nature of his derangement.

§ 136. 3. Heindorf proposes that the physician should narrate the patient's own history, or so much of it as he had learned or could surmise, to the patient, as the history of the physician; this is to enlist the confidence of the patient and make him suppose a parallel between his own case and that of the examiner, so that the *dulce habere socium malorum* may elicit circumstances which he would otherwise have concealed.

§ 137. 4. A similar proposal is to associate the individual with another, of equal rank, degree of education, social position, &c., with himself, as a confidant, as persons of this description generally display more frankness towards people of their own order, than towards those whom they regard as above them. This idea, however, it will be easily seen, is very difficult of practical application.

§ 138. Though patients of this kind may *conceal*, they can never *deny* their fixed ideas. Many persons, says Heinroth, who, in a healthy state, had no scruples in telling a large series of falsehoods, whenever their interest required it, or a confession of the truth would subject them to a disagreeable exposure, forget all this the moment they have a fixed idea to maintain. Then they overlook every advantage, and stand at no absurdity and no disgrace. To hold fast the fancy which enchains them, is their only aim. If the physician can discover this fancy, he has but to ply the party with questions in reference to it, to make

*(k)* Friedreich, Diagnostik, p. 38; and his Handbuch der gerichtlichen Psychologie, p. 175.

*(kk)* See *ante*, § 89-92.

him betray himself, and, in many cases, disclose more than the inquirer had ever thought of investigating." (l)

§ 139. In this view it is peculiarly important not to lose sight of latent insanity, or *insania occulta*. (m) This term is used to designate an unsoundness of mind which becomes perceptible externally, and consequently to others, only by the commission of a crime, the motive of which is derived exclusively from the mental disorder. The forms it assumes may vary, as even *furor transitorius* may issue from *insania occulta*. Whatever difference of opinion exists as to the possibility and the explanation of occult insanity, the facts of experience compel us to consider such a condition as possible. But to detect and substantiate it in any given case will be attended with more or less difficulty, according to the circumstances, and must be undertaken with reference to the same criteria as were pointed out in regard to the *furor transitorius*. (n)

#### IV. MENTAL UNSOUNDNESS AS CONNECTED WITH DERANGEMENT OF THE SENSES, AND DISEASE.

##### 1st. *Deaf and Dumb*. (o)

§ 140. *The deaf and dumb*, where their infirmity is congenital, or contracted in early infancy, are always in an abnormal mental and moral condition, owing to the absence of hearing and speech, the two main faculties for the culture of the mental and moral man. (p) For the same reason, only this description of the deaf and dumb comes under consideration, and in every case the point of inquiry will be the degree of development of the mental and moral powers; that is to say, of the power of understanding the consequences and the wrongfulness of the act committed. What will always exert great influence, is the question whether the deaf and dumb person has received any, and what instruction; where no instruction has been efficient, there is always great reason to conclude that the psychological conditions are wanting upon which moral responsibility depends. (q) The most difficult part of the task is always the examination of the individual, which, to lead to a reliable result, requires the assistance of an adept,—that is to say, a teacher of the deaf and dumb. In pronouncing upon such cases, it must not be forgotten that the deaf and dumb have a peculiarly irascible disposition, and that many of them, especially those whose features are marked by a froward, morose, gloomy and sinister expression, and more or less resemble those of the Cretins, are born with a tendency to deceit, malice, cunning, duplicity, and cruelty. (r)

In regard to the form and manner in which the intellectual con-

(l) See particularly Schürmayer, *Gericht. Med.* § 536; and also L. Kraemer, *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851, § 126.

(m) Friedreich, 580.

(n) Schürmayer, *Gericht. Med.* § 553.

(o) See an interesting treatise on this point, 8 *Am. Jour. of Ins.*, 17. L. Kraemer, *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851, § 122.

(p) Friedreich *Handbuch der Gerichtlichen Psychologie*, p. 659.

(q) See J. Briand, *Méd. Lég.*, article sur la surdi-mutité, p. 569. Paris, 1852. See also M. Orfila, *Méd. Lég.*, sur la surdi-mutité. Tome I. p. 460. Paris, 1848. Also, *Traite des maladies de l'oreille et de l'audition*, par Itard, Vol. XI.

(r) Schürmayer, *Gericht. Med.*, § 562.

dition of the deaf and dumb should be examined and probed, Hoffbauer and, after him, Friedreich have given a series of directions, substantially as follows: Where the deaf and dumb person is able to understand spoken words by following the motions of the lips, the inquirer must speak distinctly and with marked articulation, so as to enable the patient to see what he says. Where oral examinations are impracticable or unsatisfactory, the scrutiny, if possible, must be made in writing, when it becomes especially important to propound simple questions, intelligible to every one. But they must not be such merely as the patient is likely to expect beforehand, for these might be answered promptly and correctly; not, however, because he has properly examined into and understood their meaning, and properly concentrated in his own thoughts the answer he returns, but because he considers the question as written down, without thinking further about it, as a request to commit to paper that which perhaps would be his answer if he thought at all about it. So long as these answers are correct or, if not correct, at least congruous, there is room to believe that the questions were understood by the patient, and that he is able, to a certain extent, to make himself intelligible to others by means of writing. But the contrary does not appear if his answers are incongruous. But if several answers are incongruous, and particularly if it is found that a certain number of answers are constantly repeated, no doubt remains that the individual, however capable of tracing written characters, is not able, in the proper sense of the word, either to read or write. Where it is necessary to converse with the deaf and dumb person by means of signs, and for this purpose to call in the assistance of an expert, the capacity of the latter must be so far taken into account as to obtain the assurance that he will speak and interpret according to the intention of the judicial purpose had in view; for which reason, it will be important to instruct the interpreter fully on this subject. It may also be necessary, and is declared indispensable by some,<sup>(s)</sup> to employ two interpreters at the hearing. It may be said, in passing, that such examinations are almost always unsatisfactory in their results. Itard is of opinion that the intellectual capacity of a deaf and dumb person should be tested by a written colloquy, and that if incapable of taking part in such communications, he is to be looked upon as lacking the necessary instruction, and idiotic. The same high authority further remarks, that if a deaf and dumb man denies having received any instruction, in the hope of escaping punishment on the score of ignorance, the proper course is to accuse him of a graver crime, and one of another character from that imputed to him,<sup>(t)</sup> and that, on the whole, a deaf and dumb man who understands the questions asked of him in writing, is much the same as a man entirely *compos mentis*. Marc says that when the responsibility of a deaf and dumb person who has been taught to converse, is in question, a hearing should be had, without any judicial preparation, under the form of a conversation on general subjects entirely foreign to the offence committed, from which, by an association of ideas, a transition should be effected to general questions of morals and social order.

(s) Kleinschrod.

(t) If he knows how to write, he will have immediate recourse to this method, in order to justify himself, and will thus show the whole range of his intelligence.



“There is but little difference,” says Orfila, “between the uninstructed deaf and dumb and the idiot, and such is the affinity existing between these two conditions of the intelligence, that more than the fortieth part of the deaf and dumb are afflicted with idiocy. It may be that this mental incapacity is the result of inaudition, or it may depend upon the same cause that paralyzed the auditive sense. It should be observed, however, that the idiot is incapable of learning, whilst the deaf and dumb, on the contrary, can receive an almost complete education. Even if the uninstructed deaf and dumb do not know all the consequences of certain criminal actions, still they are not slow in learning that these actions are censurable, and even that they are the subject of punishment.”(u)

### 2d. *Blind.*

§ 141. *Blindness*(v) can only come in question here when it is congenital or has originated in early infancy, for then only can it exercise decisive influence on the mental and moral development. In general, however, blindness is no reason to suspend the personal responsibility of an agent; the defects of the mental and moral nature consequent upon it, are not diseases; and the bearing which they have upon the degree of culpability ascribable to an act committed in violation of law, must be referred to the discretion of the court, as guided by the circumstances of each case.(w)

### 3d. *Epileptics.*(x)

§ 142. Epileptics, from their nervous susceptibility, and their tendency to mental alienation, should be regarded with peculiar tenderness by those to whom is committed the administration of public justice. Nor should the idea of a recent recovery ever exclude one who has been so afflicted, from that protection which would secure at least a patient investigation of the question of moral responsibility. Recent investigations, conducted by men of eminent sagacity and great opportunities of observation, have led to the conclusion that epilepsy produces not only general mental prostration, but anomalies in the entire moral and intellectual system. And although the malady sometimes co-exists with great intelligence, yet the patient retains, not only during the attack, but for an indefinite period afterwards, but an imperfect use of his faculties.(y)

§ 143. *Epilepsy* consists in periodical attacks of insensibility, accompanied with involuntary, convulsive, and more or less violent motions

(u) Méd. Lég. Tome I. p. 460. Paris, 1848.

(v) Schürmayer, Gericht. Med. 563; and see L. Kraemer, Handbuch de Gericht. Med. Halle, C. A. Schwetschke, 1851, § 122.

(w) Compare Friedreich, 676, where the learning on this subject is collected.

(x) See L. Kraemer, Handbuch del Gericht. Med. Halle, C. A. Schwetschke, 1851, § 122; see J. Briand, Méd. Lég. p. 568. Paris, 1852; M. Orfila, Méd. Lég. Tome I. p. 332. Paris, 1848; M. Falret, Leçons Cliniques de Médecine Mentale, p. 521. Paris, 1854.

(y) Boileau de Castlenau: De l'épilepsie dans ses rapports avec l'aliénation mentale, considérés au point de vue médico-judiciare. Annales d'Hygiène publ. et de Médecine lég. Avril, 1852, No. 94. Erhardt-Ueber Zurechnungsfähigkeit der Epileptischen.

of the limbs. That persons committing a violation of law while in this condition, are entitled to the full benefit of all the considerations which affect the responsibility of the agent, needs no argument after what has been already said on the subject of unsoundness of mind. The case, however, admits of more difficulty when the question is, whether, in the interval between the attacks, a state of mind does or does not exist calculated to destroy or diminish responsibility.(z)

§ 144. It will be peculiarly necessary here, to make a division between the several classes of epileptic diseases. The infirmity is well known to appear in very different degrees of intensity, under different circumstances, and as it arises from different physical causes, it may be considered as exerting different retroactive influences on the mind and the body. It may affect the intellectual faculties in a very subordinate degree, as the cases of men like Cæsar, Napoleon and Mohammed sufficiently prove. The doctrine therefore results, that *in general epilepsy, the usual presumption of responsibility applies to acts committed in the intervals between one attack and another.* In epilepsy, according to Briand, moral liberty is entirely suspended during the attacks. An epileptic who commits a homicide during the height of his disease, has had no criminal intention, and therefore cannot incur responsibility. It is also unjust to throw upon persons, thus affected, all the responsibility of actions which they may commit immediately before or after an attack, for authors are agreed in thinking, that whether these attacks occur frequently or rarely, the mind never fully recovers all its power.

§ 145. In particular cases the responsibility of the agent may be destroyed, where real symptoms of derangement present themselves, and where it is possible or probable that the offence was brought on by such abnormal state of the faculties. The higher grades of the disease, where it is of long standing, and where the attacks recur at brief intervals, cast a doubt upon the psychical requirements of responsibility, even where nothing is observed which expressly characterizes an aberration of the mental faculties. The stage which immediately precedes an attack, the premonitory symptoms of heaviness in the head, dizziness, loss of consciousness, &c., as well as that which immediately succeeds an attack, and consists in a manifest disorder of the bodily and mental functions of the subject, is to be treated as connected with the immediate attack.(a)

§ 146. The moral requirements of responsibility are satisfied when the disease is not of great intensity, and where the intervals show no trace of an alteration of the intellectual functions produced by it, and the incitement to the act complained of is found not in the obtuseness or ebullition generally peculiar to such patients, but in a selfish motive, and where the execution of the act betrays forethought, reflection, and wilfulness.

§ 147. Persons truly epileptic are easily excited to anger and revenge on the slightest provocation, in the intervals between their attacks. Although these attacks do not always attain to such a degree as to deserve the name of mental derangement, yet it should never be forgotten

(z) Schürmayer, Gericht. Med. § 565.

(a) Ibid. § 567.

that there is always a morbid predisposition to insane ebullitions, and in general a morbid irritability, which must impair, if not destroy, the moral responsibility of actions growing out of them. And even where a sentence of punishment is pronounced, it must not be overlooked that its execution may possibly exercise a most deleterious influence on the health of the individual, by aggravating the disease, and perhaps in forcing it into real insanity. *It is not advisable, therefore, to execute a sentence of punishment upon an epileptic, without having submitted the case to the examination of a duly authorized forensic physician.*(b)

§ 148. Different views, however, have existed on this point. Platner(c) denies the responsibility of *any* epileptic whatever. Clarus(d) takes a view more in harmony with those we have just advanced, maintaining the following propositions :

1. All actions and omissions which take place during the paroxysm of epilepsy, are neither valid nor the subjects of responsibility.

2. When the attack of habitual epilepsy is succeeded by, or alternates with, a state of mania or imbecility, *all* responsibility is at an end, even where this latter state is but transitory, because no human insight or experience can decide with certainty, whether the patient, at that particular instant, was in an entirely sane condition. On the other hand, there are no reasons against the validity of civil acts done under such circumstances.

3. Swooning, heaviness of the head, weakness of memory, restlessness, enhanced irritability, &c., which precede or follow the attack, destroy as well the responsibility as the validity of acts committed during their continuance.

4. Where it is capable of proof, that the epileptics, in the intervals of their attacks, betray symptoms of malice and obtuseness, justice demands that their faults should be regarded as effects of the disease and that they should be held irresponsible for acts committed in an ebullition of rage or other passion, while such condition should operate in mitigation where the crime presupposes forecast and reflection.

5. Where the signs of an altered state of mind are wanting both before and after the attacks, the possibility still remains that these signs continue undetected because of their minuteness, and that patients of this description are less able to resist sudden impulses than persons in good health ; which would suggest a mitigation of punishment for actions of violent passion, but not for those involving reflection.

6. All these propositions only apply to idiopathic and habitual epilepsy ; not to isolated attacks, which ensue upon other diseases, and where no trace remains, after their cessation.

7. The diseases connected with epileptic symptoms, particularly hysterical spasms, accompanied with insensibility, and diseases of the generic character of St Vitus's Dance, are subject to the rules above laid down, under the restrictions mentioned in the last head, because the

(b) Schürmayer, Gericht. Men. § 568.

(c) Quaest. Med. For. P. VI.

(d) Beitrag zur Erkenntniss and Beurtheilung zweifelhaften Seelenzustände, Leipsic, 1828. P. 96.

presumption of a *latent* propensity to ebullitions of passion is not, in such cases, vouched by experience.(e)

V. MENTAL UNSOUNDNESS AS CONNECTED WITH SLEEP.(f)

§ 149. Under this general head may be grouped *Somnolentia*, or sleep drunkenness, (*Schlaftrunkenheit*), *Somnambulism*, and *nightmare*, the two last of which may be joined.(g) In the forensic treatment of such maladies each case must depend upon its own circumstances, when it will also be important for the judge to consider whether the person subject to such a disorder was properly aware of it, and of its possible consequences, and able to take the precautions by which those consequences might have been averted.

§ 150. Sleep would seem to be only a peculiar form of cerebral life, and not a negation of the life of the brain, producing consequent fatigue, exhaustion, or weakness; it is not to be supposed that the state of sleep issues out of the intellect itself, but the intellect is diverted by the peculiar change of the action of the brain into that state of existence which we call sleep. But the intellect does not sleep; nor can it ever be said that its activity diminishes during sleep; we merely cease to perceive its activity. But that the activity which involves sleep may also be morbid—abnormal—and connected with cramps or convulsive symptoms, is not to be doubted. The centripetal action of the senses is extinct during sleep, in dreams it is half active, and produces isolated, dim, and hazy sensations, forming the usual substratum of dreams. Sleep is interrupted by whatever terminates the peculiar condition of the brain upon which sleep depends; by the natural expiration of the state of the brain, by vivid and sudden impressions on the senses, and by disagreeable sensations. Now, in a certain morbid condition of the brain this awaking is not complete, and does not restore the waking state with a full and correct perception of surrounding things—but an intermediate state between sleeping and waking is produced, which resembles intoxication, and is called the *intoxication of sleep*, (*schlaftrunkenheit*.) This state admits of action, which is directed by the phantoms of the dream; talking in sleep being very nearly allied to waking, and dreams themselves being midway between sleeping and waking, for in the depths of sleep we no longer become conscious of dreams.(h) The *nightmare* is grounded upon a morbid

(e) Compare, on the responsibility of epileptics, Friedreich, "*Handbuch der gerichtlichen Psychologie*," p. 637, and Henke, "*Abhandlungen aus dem Gebiete der gerichtlichen Medizin*." Vol. IV. p. 1.

(f) See Méd. Lég. M. Orfila. Tome I. p. 456. Paris, 1848; Méd. Lég. M. Briand, p. 563. Paris, 1852; Renaudin sur L'Aliénation Mentale, Chap. 6th, p. 255. Paris, 1854; Léon's Cliniques de M. Falret. Léon 4th, p. 117. Paris, 1854.

(g) Siebold—Lehrbuch der Gericht. Med. Berlin, 1847, § 196; L. Kraemer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 115.

(h) The following extract from the *Médecine Légale*, &c. J. Briand, is very pertinent to this point:

"De même que, lorsque nous nous endormons, nous conservons encore plus ou moins longtemps l'idée des objets dont nous venons de nous occuper, et que notre imagination nous les retrace souvent dans nos rêves; de même aussi, lorsque des idées plus ou moins bizarres, plus ou moins extravagantes, se sont emparées de notre esprit pendant le sommeil, elles ne nous quittent pas tout d'un coup, quand nous nous réveillons. Pour peu que le réveil soit brusque, les premiers objets qui frappent nos sens sont mo-

aggravation of abnormal sensations in sleep as colored by dreams; under certain external circumstances, and certain forms of transition into the state of semi-consciousness, it may lead to acts of violence. In examining such cases it is important to inquire into the existence of abnormal physical conditions, such as plethora, predisposition to congestions in the head or breast, actual congestions, diseases of the heart, abnormal plethora, suppressed hæmorrhoids, eruptions of the skin, or other habitual secretions which have been driven in, nervous affections of various kinds, impure air in the bed-room, a hearty meal, or indulgence in ardent spirits immediately or shortly before going to sleep. *Somnambulism* is not a mere intensified dream, but *in foro medico*, must be treated as a morbid independent state, and in a legal point of view, every act shown to have been committed under its influence is to be disconnected with voluntary moral agency. (i)

1st. *Somnolentia, or Sleep-drunkenness.*

§ 151. Sleep-drunkenness may be defined to be the lapping over of a profound sleep on the domains of apparent wakefulness, producing an involuntary intoxication on the part of the patient, which destroys at the time his moral agency. Under the name of *Somnolentia*, which was given to it by Ploucquet and the consequent French writers, and of *Schlaftrunkenheit*, which it was styled by the German School, it became the subject of general discussion at the beginning of the present century. The first case in which the symptoms were unmistakably observable, was that of Buchner. (j) A sentry, who had fallen asleep during his watch, being suddenly aroused by the officer in command, fell upon the latter with his drawn sword, with an attack so furious that the most serious consequences were only averted by the interposition of bystanders. The result of the medical examination was, that the act was involuntary and irresponsible, being the result of a violent confusion of mind consequent upon the sudden involuntary waking from a profound sleep.

§ 152. Shortly afterwards, occurred the case of a day-laborer, who killed his wife with a waggon-tire, the blow being struck immediately upon his starting up from a deep sleep, from which he was forcibly awakened. In this case, there was evidence *aliunde* that the defendant was seized when waking with a delusion that a "woman in white" had snatched his wife from his side and was carrying her away, and that his agony of mind was so great that his whole body was wet with perspiration. There was no doubt of the defendant's irresponsibility. (k) In this country, the case properly would fall under the head of excusable homicide by misadventure. (l) In point of result, these

difiés par ces idées antécédentes, comme á la faible lumire de la nuit les objets qu nous voyons sont altérés par les fantômes de notre imagination. Nous sommes deja en état d'exécuter des mouvements avec une certaine précision que nos sens ne sont pas encore complètement éveillés: et souvent ces mouvements se rapportent, non pas à notre état réel, mais à celui dans lequel nous croyons être, en melant aux idées qui nous ont occupés les sensations obscures des objets qui nous environnent réellement." Méd. Lég. p. 563. Paris, 1852.

(i) Schürmayer, Gericht. Med. § 561.

(k) Wildberg's Jahrbuch, 2 Bd. p. 32.

(j) See Henke's Zeitschr. 10 B. p. 39.

(l) See Wharton on Hom. 210.

cases vary little from an early English case, in which, though there was no psychological question opened, there were the same delusions as to danger heightened by the same disturbance of mind as is produced by a sudden waking up from a deep sleep. The defendant, being in bed and asleep in his house, his maid-servant, who had hired the deceased to help her to do her work, as she was going to let her out about midnight, thought she heard thieves breaking open the door, upon which she ran up stairs to the defendant, her master, and informed him thereof. Suddenly aroused, he sprang from his bed, and running down stairs with his sword drawn, the deceased hid herself in the butlery, lest she should be discovered. The defendant's wife, observing some person there, and not knowing her, but conceiving she was a thief, cried out, "Here are they who would undo us;" and the defendant, in the paroxysm of the moment, dashing into the butlery, thrust his sword at the deceased and killed her.<sup>(m)</sup> The defendant was acquitted under the express instructions of the court, and the case has stood the test of the common law courts for over two hundred years, during which it has never been questioned. It is important to observe, however, that if it differs from the two cases already noticed under this head, in the increased *naturalness* of the delusion under which the defendant was laboring, it differs from them in the comparatively longer interval in which his perceptive faculties had the opportunity to arrange themselves. Let it be supposed that it was the *wife*, and not the *husband*, who had slain the deceased. Under the circumstances, the result would hardly have been different, and yet in this case the distinction between her responsibility and that of the laborer who killed his wife on the waking spasm, is simply in the *degree* of probability of delusions, which in both cases were unfounded. If in the one case, this improbability was more glaring, let it be recollected that there was much less time afforded to the patient to compose himself to a reasoning state of mind.

§ 153. Much more recently, a case has occurred which has led to the whole question being re-examined and discussed. A young man, named A. F., about twenty years of age, was living with his parents in great apparent harmony, his father and himself being alike distinguished for their extravagant devotion to hunting. In consequence of the danger of nocturnal attacks, they were in the habit of taking their arms with them into their chamber. On the afternoon of September 1st, 1839, the father and son having just returned from hunting, their danger became the subject of particular conversation. The next day the hunting was repeated, and on their return, after taking supper with the usual appearance of harmony, the family retired at about ten o'clock, the father and mother occupying one apartment, and the son the next, both father and son taking their loaded arms with them to bed. At one o'clock, the father got up to go into the entry, and on his return, jarred against the door opening into the entry, upon which the son instantly sprang up and discharging his gun at the father, gave the latter a fatal wound in the breast, crying at the same time, "Dog, what do you want here?" The father fell immediately to the ground,

(m) Levet's case, Cro. Car. 438; 1 Hale, 42, 474.

and the son, then first recognizing him, sank on the floor crying, "O! Jesus, it is my father." The evidence was, that the whole family were subject to great restlessness in their sleep, and that the defendant in particular was affected by a tendency to be easily distressed by dreams, which lasted for about five minutes on waking, before their effect was entirely dissipated. His own version of the affair was, "I must have fired the gun in my sleep; it was moonshine, and we were accustomed to talk and walk in our sleep. I recollect hearing something jar; I jumped up, seized my gun and shot where I heard the noise. I recollect seeing nothing, nor am I conscious of having spoken. The night was so bright that everything could have been seen. I must have been under the delusion that thieves had broken in." The concurrent opinions of the medical experts examined on the trial were, that the act was committed in a state of *Somnolentia* or *Sleep-drunkenness*, and that it was not that of a free and responsible agent. (*n*)

It is important to distinguish *Somnolentia*, or *Sleep-drunkenness*, which is a state which to a greater or less extent is incidental to every individual, from *Somnambulism*, which is an abnormal condition incident to a very few. The experience of every-day life demonstrates how much the former enters into almost every relation. Children, particularly, sometimes struggle convulsively in the effort to wake up, which often is continued for several minutes. The very exclamations, "Wake up,"—"Come to,"—which are so common in addressing persons in the waking condition, are scarcely necessary to bring to the mind many recollections of cases where the waking struggle has been peculiarly protracted. Of course there are constitutions where this struggle is peculiarly distressing, just as there are constitutions in which the tendency to sleeplessness is equally marked. Dr. Krügelstein tells us of a merchant of distinction who had an irrepressible tendency to sleep in the afternoons, and yet who, whenever he was wakened up, was for a few moments overcome with a paroxysm, over which he had no control. Dr. Meister himself, (*o*) relates the following phenomenon:—"I was obliged to take a journey of eight miles on a very hot summer's day, my seat being with my back to the horses, and the sun directly in my face. On reaching the place of destination, and being very weary and with a slight headache, I laid myself down, with my clothes on, on a couch. I fell at once asleep, my head having slipped under the back of the settee. My sleep was deep, and, as far as I can recollect, without dreams. When it became dark, the lady of the house came with a light into the room. I suddenly awoke, but for the first time in my life, without collecting myself. I was seized with a sudden agony of mind, and picturing the object which was entering the house as a spectre, I sprang up and seized a stool, which, in my terror, I would have thrown at the supposed shade. Fortunately, I was recalled to consciousness by the firmness and tact of the lady herself, who, with the greatest presence of mind, succeeded in composing my attention until I was entirely awakened."

(*n*) Henke's Zeitschrift, 1853, Vol. LXV. p. 190-1; and see also a case of much greater doubt in Klein's Annalen der Gesetzgebung, &c. viii. B. Berlin, 1798; and Möllers gerichtliche Arzneiwissenschaft, Vol. I. 302.

(*o*) Henke's Zeitschrift, Vol. LXV. 456.

§ 154. The existence of this intermediate state between sleeping and waking, and of the "drunkenness" by which it is sometimes accompanied, is recognized by even the older elementary writers. Thus Wendler(*p*) says: "Discerni autem possit expergefactio naturalis a præternaturali. Etenim somno sensim reficitur sensibilitas animi, quæ, cum in eum evehitur gradum, ut solemnibus pistoque non fortioribus excitamentis ad cogitandum excitetur, naturalis expergefactio est; contra ubi facultate illa parum aucta, insolita incitamentorum vis animum cogit ad statum vigiliæ, præternaturalem hanc dicimus expergefactionem."

§ 155. The following tests it is important to apply in order to determine the question of responsibility:—

(*a.*) A general tendency to deep and heavy sleep must be shown, out of which the patient could only be awakened by violent and convulsive effort.

(*b.*) Before falling asleep, circumstances must be shown producing disquiet which sleep itself does not entirely compose.

(*c.*) The act under examination must have occurred at the time when the defendant was usually accustomed to have been asleep.

(*d.*) The cause of the sudden awakening must be shown. It is true that this cannot always happen, as sometimes the start may have come from a violent dream.

(*e.*) The act must bear throughout, the character of unconsciousness.

(*f.*) The actor himself, when he awakes, is generally amazed at his own deed, and it seems to him almost incredible. Generally speaking he does not seek to evade responsibility, though there are some unfortunate cases in which, the wretchedness of the sudden discovery, overcomes the party himself, who seeks to shelter himself from the consequences of a crime of which he was technically, though not morally, guilty.

§ 156. A late very intelligent observer, Dr. Krügelstein, has given us a critical and extended observation of those cases in which crimes have been committed in the supposed somnambulant state, in which he draws the inferences that this species of mania occurs chiefly, if not entirely, with persons who are sound sleepers and are suddenly startled by some violent exterior cause, from a sleep which, from indigestion or other causes, has been already disturbed and excited by dreams of peculiar vivacity. Such cases are universally marked with a want of consciousness in the actor, and followed, when he awakes, with entire astonishment and then violent remorse.(*q*)

§ 157. Dr. Taylor, in his admirable treatise,(*r*) gives us the following cases on the same point:—

A pedler, who was in the habit of walking about the county armed with a sword-stick, was awakened one evening, while lying asleep on the high road, by a man who was accidentally passing, seizing him and

(*p*) *Dissertatio de Somno.* Lipsiæ, 1805. p. 23.

(*q*) Krügelstein, Ueber die in Zustände der Schlaftrunkenheit verübten Gewaltthätigkeiten in gerichtsärztlicher Beziehung.

(*r*) *Med. Jur.*, 599, 600.



shaking him by the shoulders. The pedler suddenly awoke, drew his sword and stabbed the man, who afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel on the ground that he could not have been conscious of an act perpetrated in a half-waking state. This was strengthened by the opinion of the medical witness. The prisoner was, however, found guilty. Under such circumstances it was not unlikely that an idea had arisen on the prisoner's mind that he had been attacked by robbers, and therefore stabbed the man in self-defence.(s)

Dr. Hartshorne, in a note, tells us that a somewhat similar case occurred in Philadelphia, a few years back, in which a man was shot with a pistol by an acquaintance, whom he had suddenly aroused from sleep, late at night, in an open market house. The plea was, that the deceased was mistaken for a robber when the pistol was fired; but the jury found a verdict of manslaughter.

§ 158. Two persons, in a case cited by Mr. Best, who had been hunting during the day, slept together at night. One of them was renewing the chase in a dream, and imagining himself present at the death of the stag, cried out, "I'll kill him! I'll kill him!" The other, awakened by the noise, got out of bed, and by the light of the moon beheld the sleeper give several deadly stabs with a knife, in that part of the bed which his companion had just quitted. Suppose a blow, given in this way, had proved fatal, and the two men had been shown to have quarreled previously to retiring to rest! But a defence of this kind, as is well remarked by Dr. Taylor, may be unduly strained. Thus, where there is an enmity, with a motive for the act of homicide, the murderer while sleeping in the same room may select the night for an assault, and perpetrate the act in darkness in order the more effectually to screen himself. In the case of *Reg. v. Jackson*,(t) it was urged in defence that the prisoner, who slept in the same room with the prosecutor, had stabbed him in the throat, owing to some sudden impulse during sleep; and the case of *Milligan*, above given, was quoted by the learned counsel, in support of the view that the prisoner was irresponsible for the act. It was proved, however, that the prisoner had shown malicious feeling against the prosecutor and that she wished him dead. The knife with which the wound had been inflicted bore the appearance of having been recently sharpened, and the prisoner must have reached over her daughter (the prosecutor's wife), who was sleeping in the same bed with him, in order to produce the wound. These facts are quite adverse to the supposition of the crime having been perpetrated under an impulse from sleep, and the prisoner was convicted. In another case, *Reg. v. French*,(u) it was proved that the prisoner while sleeping in the same room had killed the deceased, who was a stranger to him, under some delusion. There was, however, clear evidence that the prisoner was insane, and on this ground he was acquitted under the direction of the judge.(v)

(s) *The Queen v. Milligan*. Lincoln Aut. Assizes, 1836.

(t) *Liverpool Autumn Ass.*, 1847.

(u) *Dorset Autumn Ass.*, 1846.

(v) *Taylor's Med. Jurisprudence*, pp. 599, 600.

2nd. *Somnambulism.*(*w*)

§ 159. "Dreaming," says Dr. Rush, "is a transient paroxysm of delirium. Somnambulism is nothing but a higher grade of the same disease. It is a transient paroxysm of madness. Like madness, it is accompanied with muscular action, with incoherent or coherent conduct, and with that complete oblivion of both which takes place in the worst grade of madness. Coherence of conduct discovers itself in persons who are affected with it undertaking, or resuming certain habitual exercises or employments. Thus we read of the scholar resuming his studies, the poet his pen, and the artisan his labors, while under its influence, with their usual industry, taste, and correctness. It extended still further in the late Dr. Blacklock, of Edinburgh, who rose from his bed, to which he had retired at an early hour, came into the room where his family were assembled, conversed with them, and afterwards entertained them with a pleasant song, without any of them suspecting he was asleep, and without his retaining after he awoke the least recollection of what he had done."(*x*)

§ 160. A late authoritative writer(*y*) gives us, in great minuteness, a narrative of a young woman, a somnambulist, who, when twenty-three years old, having been previously in good health and regular in her menstruation, was seized with epilepsy in consequence of a fright produced by an attack of robbers. She soon became the victim of somnambulism, which manifested itself in all its ordinary incidents, such as deep sleep, want of memory, and of firmness in her movements when under its influence. While in the somnambulant condition she had the habit of concealing articles of various kinds, the result of which was that she was charged with theft. Under the advice of Dr. Dornblüth she was finally acquitted, and under his care was gradually restored to health.

Dr. Upham gives us the following American illustration: "A farmer, in one of the counties of Massachusetts, according to the account of the matter which was published at the time, had employed himself for some weeks in the winter, thrashing his grain. One night, as he was about closing his labors, he ascended a ladder to the top of the great beams in the barn, where the rye which he was thrashing was deposited, to ascertain what number of bundles remained unthrashed, which he determined to finish the next day. The ensuing night, about two o'clock, he was heard by one of the family to arise and go out. He repaired to his barn, being sound asleep and unconscious of what he was doing, set open his barn doors, ascended the great beams of the barn where his rye was deposited, threw down a flooring, and commenced thrashing it. When he had completed it, he raked off the straw and shoved the rye to one side of the floor, and again ascended the ladder with the straw, and deposited it on some rails that lay across the great beams. He then threw down another flooring of rye, which

(*w*) E. L. Heim, *vermischte med. Schriften*, herausg. von A. Paetsch. Leipzig, 1836. § 336. L. Kraemer *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851. § 115. Siebold *Lehrbuch der Gericht. Med.* Berlin, 1847. § 196.

(*x*) Rush on the Mind, pp. 302, 303.

(*y*) Dornblüth, *Geschichte einer Nachtwandlerin*, Henke's Zeitschrift, XXXII. 2.

he thrashed and finished as before. Thus he continued his labors until he thrashed five floorings, and on returning from throwing down the sixth and last, in passing over part of the haymow, he fell off, where the hay had been cut down about six feet, to the lower part of it, which awoke him. He at first imagined himself in his neighbor's barn; but after groping about in the dark for a long time, ascertained that he was in his own, and at length found the ladder, on which he descended to the floor, closed his barn doors, which he found open, and returned to his house. On coming to the light he found himself in such a profuse perspiration that his clothes were literally wet through. The next morning on going to his barn, he found that he had thrashed during the night, five bushels of rye, had raked the straw off in good order, and deposited it on the great beams, and carefully shoved the grain to one side of the floor, without the least consciousness of what he was doing, until he fell from the hay."(z)

"A man in this state," says Falret, "has no longer the same relations with the exterior world. He enters into movements which seem the result of the will, since he avoids blows and falls with the greatest nicety; and yet he does not seem to see, or at least his sight appears very confused. The mind is evidently in action, since somnambulists often write things which they were unable to do when awake; maintain conversation, and perform actions implying regular ideas. And yet after the attack they preserve no remembrance of their thoughts, feelings, or actions, as if consciousness had been entirely obliterated whilst it lasted."(a)

§ 162. The views of Abererombie have been so long the standard on this point that we cannot refrain from giving them here in full: "Somnambulism," he says, "appears to differ from dreaming chiefly in the degree in which the bodily functions are affected. The mind is fixed in the same manner as in dreaming, upon its own impressions as possessing a real and present existence in external things; but the bodily organs are more under the control of the will, so that the individual acts under the influence of erroneous conceptions, and holds conversation in regard to them. He is also, to a certain degree, susceptible of impressions from without, through his organs of sense; not, however, so as to correct his erroneous impressions, but rather to be mixed up with them. A variety of remarkable phenomena arise out of these peculiarities, which will be illustrated by a slight outline of this singular affection. The first degree of somnambulism generally shows itself by a propensity to talk during sleep,—the person giving a full and connected account of what passes before him in dreams, and often revealing his own secrets or those of his friends. Walking during sleep is the next degree, and that from which the affection derives its name. The phenomena connected with this form are familiar to every one. The individual gets out of bed; dresses himself; if not prevented, goes out of doors; walks frequently over dangerous places in safety; sometimes escapes by a window and gets to the roof of a house; after a considerable interval, returns and goes to bed; and all that has passed conveys to his

(z) Upham on Mental Action, pp. 182, 183.

(a) *Lçons Cliniques de l'alienation Mentale*, par M. Falret. Leçon 4, p. 121. Paris, 1854.

mind merely the impression of a dream. A young nobleman mentioned by Hortensius, living in the citadel of Breslau, was observed by his brother, who occupied the same room, to rise in his sleep, wrap himself in a cloak, and escape by a window to the roof of the building. He there tore in pieces a magpie's nest, wrapped the young birds in his cloak, returned to his apartment, and went to bed. In the morning he mentioned the circumstance as having occurred in a dream, and could not be persuaded that there had been anything more than a dream, till he was shown the magpies in his cloak. Dr. Prichard mentions a man who rose in his sleep, dressed himself, saddled his horse, and rode to the place of a market which he was in the habit of attending once every week; and Martinet mentions a man who was accustomed to rise in his sleep and pursue his business as a saddler. There are many instances on record of persons composing, during the state of somnambulism: as of boys rising in their sleep and finishing their tasks which they had left incomplete. A gentleman at one of the English universities had been very intent during the day in composition of some verses, which he had not been able to complete: during the following night he arose in his sleep and finished his composition, then expressed great exultation, and returned to bed. In these common cases, the affection occurs during ordinary sleep; but a condition very analogous is met with, coming on in the daytime, in paroxysms, during which the person is affected in the same manner as in the state of somnambulism, particularly with an insensibility to external impressions: this presents some singular phenomena. These attacks in some cases come on without any warning; in others, they are preceded by a noise or sense of confusion in the head. The individuals then become more or less abstracted, and are either unconscious of any external impressions, or very confused in their notions of external things. They are frequently able to talk in an intelligible and consistent manner, but always in reference to the impression which is present in their own minds. They in some cases repeat long pieces of poetry, often more correctly than they can do in their waking state, and not unfrequently things which they could not repeat in their state of health, or of which they were supposed to be entirely ignorant. In other cases they hold conversations with imaginary beings, or relate circumstances or conversations which occurred at remote periods, and which they were supposed to have forgotten. Some have been known to sing in a style far superior to anything they could do in their waking state; and there are some well-authenticated instances of persons in this condition expressing themselves correctly in languages with which they were imperfectly acquainted. I had lately under my care a young lady who is liable to an affection of this kind, which comes on repeatedly during the day, and continues from ten minutes to an hour at a time. Without any warning, her body became motionless, her eyes open, fixed, and entirely insensible, and she became totally unconscious of any external impression. She has been frequently seized while playing on the piano, and has continued to play, over and over, part of a tune with perfect correctness, but without advancing beyond a certain point. On one occasion she was seized after she had begun to play from the book a piece of music which was new to her. During the

paroxysm she continued the part which she had played, and repeated it five or six times with perfect correctness; but on coming out of the attack, she could not play it without the book. During the paroxysms the individuals are, in some instances, totally insensible to anything that is said to them; but in others, they are capable of holding conversation with another person with a tolerable degree of consistency, though they are influenced to a certain degree by their mental visions, and are very confused in their notions of external things. In many cases, again, they are capable of going on with the manual occupations in which they had been engaged before the attack. This occurred remarkably in a watchmaker's apprentice mentioned by Martinet. The paroxysms on him appeared once in fourteen days, and commenced with a feeling of heat extending from the epigastrium to the head. This was followed by confusion of thought, and this by complete insensibility: his eyes were open, but fixed and vacant, and he was totally insensible to any thing that was said to him, or to any external impression. But he continued his usual employment, and was always much astonished, on his recovery, to find the change that had taken place in his work since the commencement of his paroxysm. This case afterwards passed into epilepsy. Some remarkable phenomena are presented by this singular affection, especially in regard to exercises of memory and the manner in which the old associations are recalled into the mind; also, in the distinct manner in which the individuals sometimes express themselves on subjects with which they had formerly shown but an imperfect acquaintance. In some of the French cases of epidemic "extase," this had been magnified into speaking unknown languages, predicting future events, and describing occurrences of which the persons could not have possessed any knowledge. These stories seem, in some cases, to resolve themselves merely into embellishment of what really occurred, but in others there can be no doubt of connivance and imposture. Some facts, however, appear to be authentic, and are sufficiently remarkable. Two females, mentioned by Bertrand, expressed themselves during the paroxysm very distinctly in Latin. They afterwards admitted that they had some acquaintance with the language, though it was imperfect. An ignorant servant-girl, mentioned by Dr. Dewar, during paroxysms of this kind showed an astonishing knowledge of geography and astronomy; and expressed herself in her own language in a manner which, though often ludicrous, showed an understanding of the subject. The alternations of the seasons, for example, she explained by saying that the world was set *a-gee*. It was afterwards discovered that her notions on this subject had been derived from hearing a tutor giving instructions to the young people of the family. A woman who was some time ago in the Infirmary of Edinburgh on account of an affection of this kind, during her paroxysms mimicked the manner of the physicians, and repeated correctly some of their prescriptions in the Latin language. Another very singular phenomenon presented by some instances of this affection is what has been called, rather incorrectly, a state of double consciousness. It consists in the individual recollecting, during a paroxysm, circumstances which occurred in a former attack, though there was no remembrance of them during the interval. This, as well

as various other phenomena connected with the affection, is strikingly illustrated in a case described by Dr. Dyce, of Aberdeen, in the Edinburgh Philosophic Transactions. The patient was a servant-girl, and the affection began with fits of somnolency, which came upon her suddenly during the day, and from which she could, at first, be aroused by shaking, or by being taken out in the open air. She soon began to talk a great deal during the attacks, regarding things which seemed to be passing before her, as a dream; and she was not, at this time, sensible of anything that was said to her. On one occasion she repeated distinctly the baptismal service of the Church of England, and concluded with an extemporary prayer. In her subsequent paroxysms she began to understand what was said to her, and to answer with a considerable degree of consistency, though the answers were generally, to a certain degree, influenced by her hallucinations. She also became capable of following her usual employments during the paroxysm; and at one time she laid out the table correctly for breakfast, and repeatedly dressed herself and the children of the family, her eyes remaining shut the whole time. The remarkable circumstance was now discovered, that during the paroxysm she had a distinct recollection of what took place in her former paroxysms, though she had no remembrance of it during the intervals. At one time she was taken to church while under the attack, and there behaved with propriety, evidently attending to the preacher; and she was at one time so much affected as to shed tears. In the interval she had no recollection of having been at church; but in the next paroxysm she gave a most distinct account of the sermon, and mentioned particularly the part of it by which she had been so affected. This woman described the paroxysm as coming on with a cloudiness before her eyes, and a noise in the head. During the attack her eyelids were generally half-shut: her eyes sometimes resembled those of a person afflicted with amaurosis,—that is, with a dilated and insensible state of the pupil, but sometimes they were quite natural. She had a dull, vacant look; but, when excited, knew what was said to her, though she often mistook the person who was speaking; and it was observed that she seemed to discern objects best which were faintly illuminated. The paroxysms generally continued about an hour, but she could often be roused out of them; she then yawned and stretched herself, like a person awaking out of a sleep, and instantly knew those about her. At one time, during the attack, she read distinctly a portion of a book which was presented to her; and she often sung, both sacred and common pieces, incomparably better, Dr. Dyce affirms, than she could do in a waking state. The affection continued to recur for about six months, and ceased when a particular change took place in her constitution.

We have another very remarkable modification of this affection, referred to by Mr. Combe, as described by Major Elliot, Professor of Mathematics in the United States Military Academy at West Point. The patient was a young lady of cultivated mind, and the affection began with an attack of somnolency, which was protracted several hours beyond the usual time. When she came out of it, she was found to have lost every kind of acquired knowledge. She imme-

diately began to apply herself to the first elements of education, and was making considerable progress, when, after several months, she was seized with a second fit of somnolency. She was now at once restored to all the knowledge which she had possessed before the first attack, but without the least recollection of anything that had taken place during the interval. After another interval she had a third attack of somnolency, which left her in the same state as after the first. In this manner she suffered these alternate conditions for a period of four years, with the very remarkable circumstance that during one state she retained all her original knowledge, but during the other, that only which she had acquired since the first attack. During the healthy interval, for example, she was remarkable for the beauty of her penmanship; but during the paroxysm, wrote a poor, awkward hand. Persons introduced to her during the paroxysm, she recognized only in a subsequent paroxysm, but not in the interval; and persons whom she had seen for the first time during the healthy interval, she did not recognize under the attack. (*b*)

§ 162. Carus tells us in his lectures (Leipsic, 1831,) of a clergyman who was a somnambulist, who would get up in his sleep, take paper, and write out a sermon. If a passage did not please him, he would strike it out, and correct it with great accuracy. We are told by Steltzer of a somnambulist who clambered out of a garret window, descended into the next house, and killed a young girl who was asleep there. (*c*) As a counterpoise to these, we have the case of a pre-assumed somnambulism for the purpose of cloaking an intended crime. (*d*)

A curious example of somnambulism, observed in a monk, is mentioned by M. de Savarin, as related to him by the Prior of the convent where it happened, who was an eye-witness of the occurrence. "Very late one evening the patient somnambulist entered the chamber of the Prior, his eyes were open but fixed, the light of two lamps made no impression upon him, his features were contracted, and he carried in his hand a large knife. Going straight to the bed, he had first the appearance of examining if the Prior was there. He then struck three blows, which pierced the coverings, and even a mat which served the purpose of a mattress. In returning, his countenance was unbent, and was marked by an air of satisfaction. The next day the Prior asked the somnambulist what he had dreamed of the preceding night, and the latter answered that he had dreamed that his mother had been killed by the Prior, and that her ghost had appeared to him demanding vengeance, that at this sight he was so transported by rage, that he had immediately run to stab the assassin of his mother; that a little while after, he awoke bathed in perspiration, and very content to find he had only dreamed." M. de Savarin adds, that if under these circumstances the Prior had been killed, the monk somnambulist could not have been punished, because it would have been upon his part an involuntary murder. (*e*)

(*b*) Abercrombie on the Intellectual Powers, p. 238, &c.

(*c*) Steltzer, *uber den Willen*, Leips., 1817-8, p. 273.

(*d*) Fabner, *System der Ger. Arznei*. 1 Bd. p. 43.

(*e*) *Physiologie du gout*. Tome II. p. 3. Paris, 1834.

## VI. MENTAL UNSOUNDNESS, AS AFFECTING THE TEMPERAMENT.(f)

1st. *Depression.*(g)

§ 163. By this term may be designated a condition, which continues for a long time, even for years, without assuming the form of real aberration of mind, but which derives peculiar importance and significance in matters of penal jurisprudence, from the fact that a criminal act introduces the transition to a disordered mental state, inasmuch as it makes its appearance as the first decisive symptom, which is rapidly followed by others. It develops itself in a diminished estimation of self, in a want of self-reliance and peculiar morbid despondency.

Dr. Johnson thus describes this state in *Rasselas*. "To indulge the power of fiction, and send imagination out upon the wing, is often the sport of those who delight too much in silent speculation. He who has nothing external that can divert him, must find pleasure in his own thoughts, and must conceive himself what he is not: for who is pleased with what he is? He thus expatiates on boundless futurity, and culls from all imaginary conditions that which, for the present moment, he would most desire; amuses his desires with impossible enjoyments, and confers upon his pride unattainable dominion. The mind dances from scene to scene, unites all pleasures in all combinations, and riots in delights which nature and fortune, with all their bounty, cannot bestow. In time, some particular train of ideas fixes the attention; all other intellectual gratifications are rejected; the mind, in weariness or leisure, returns constantly to the favorite conception, and feasts on the luscious falsehood whenever she is offended with the bitterness of truth. By degrees the reign of fancy is confirmed; she grows first imperious, and in time despotic. Then fictions begin to operate as realities—false opinions fasten upon the mind—and life passes in dreams of rapture or of anguish."

The celebrated physician Boerhaave was once engaged in so profound a meditation that he did not close his eyes for six weeks. And, in general, "any fixity of thought may be considered a monomania."(h) Pascal being thrown down on a bridge, fancied ever after that he was standing on the brink of a terrific precipice, which appeared to him an abyss, ever ready to engulf him. So immutable was this dread, that when his friends conversed with him they were obliged to conceal the imaginary perils with chairs, on which they seated themselves, to tranquilize his perturbed mind. Archimedes, it is related, was heedless of the slaughter around him. Father Castel, the inventor of the ocular harpsichord, spent an entire night in one position, ruminating on a thought that struck him as he was retiring to rest.(i)

(f) See *Etudes Médico-Psychologiques sur l'Aliénation Mentale*, par L. F. E. Re-naudin. Chap. 2, p. 36. Paris, 1854.

(g) Krahmer, *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851, § 109; Siebold, *Lehrbuch der Gericht. Med.* Berlin, 1847, § 208.

(h) *Curiosities of Medical Experience*. Second edition. On Ecstatic Exaltation, p. 38. Mind and Matter, by J. G. Millingen, M. D., M. A., p. 80, 81, 82.

(i) Morel gives the following powerful sketch of primitive or simple depression. (*Traité théorique et pratique des Maladies Mentales*, par M. Morel. Tome I. p. 386.



§ 164. "Depression of mind," says Reid, "may be owing to melancholy, a distemper of the mind which proceeds from the state of the body,

Paris, 1852.) As there exists a mania which shows itself rather in insanity of action than of mind, (manie instinctive,) so likewise there exists a state of melancholy without delirium. Without our often being able to instance other causes than those phenomena which accompany the *changé* from adolescence to puberty, from puberty to age, and from mature age to the critical period: at the happiest periods of life, we feel a vague weariness, a motiveless fear, an indefinable sadness, which sometimes is only transitory and at others is the starting point of the most serious disturbances. It is, says Guislain, a state of sadness, of dejection accompanied with or without the shedding of tears, without any notable aberration of imagination, intelligence or feeling. It is the heart which exclusively suffers, but soon this suffering of the heart shows itself in a prostration of all the intellectual powers, a state which absorbs all individual energy, and appears only to leave the capacity of suffering. Where is the man who has not experienced these painful feelings; and if by an effort of reasoning we are able to affix the form of continuity to these sensations, which are only sometimes fugitive, we will have a perfect idea of this intolerable state. Madame de Staël vividly touches on this in *Corinne*.

"She (*Corinne*) had taken such a horror for all the common pursuits of life, that to take the least resolution, to give the least order, caused her an increase of pain. She was unable to live except in perfect inactivity. She arose, laid down, arose again, opened a book without being able to understand a line; often she remained for hours at her window, and then would walk with rapidity in her garden. At another time she would take a bouquet of flowers and try to make herself dizzy with their perfume. Time, a never ceasing pain, the feeling of existence pursued her, and she sought relief in a thousand ways from that devouring faculty of thought which did not now yield, as formerly, a variety of reflections, but one single idea, one single image, armed with cruel points that tore her heart. Every word was found with difficulty, and often she traced words conveying no sense, words that even frightened her, when she attempted to re-read them, as if the pain of the fever was there written. Feeling herself then incapable of turning her thoughts from her own condition. She painted all that she had suffered, but it was no longer in those general ideas, those universal feelings that find a response in every heart; but it was the cry of anguish, a long monotonous cry, it was misfortune, but it was no longer genius."

When a like condition, says Guislain, is accompanied with anxieties, groanings, sobs, a desire to commit suicide, or any other determination, it is no longer in its simplest state. \* \* I on the contrary think that a like condition can continue in connection with the above mentioned tendencies. How else could we explain those suicides without name, those irregular actions of which we see so many examples in instinctive mania, the affection which, above all others, has the closest relation to melancholy? In the greater number of cases, these forms are distinguishable less perhaps by the diversity of the acts than by the nature of the depressive principles. We may readily admit that instinctive maniacs generally betray themselves by more froward deeds, and by more sudden and more cruelly energetic and destructive determinations than the simple hypomaniacs who rather turn against themselves their fatal homicidal impulses. In the first case also the depravity of the instincts is more often connected with the organic affections, a vicious education or a prior state of immorality, whilst in the latter class, the impulses which they themselves deplore are the harder to be understood, because (1), the individual is generally placed in the most favorable social condition; (2), his education has left nothing to be wished for, and (3), his delicate sensibility would never cause the actions to which he is irresistibly forced in this unfortunate unhealthy state, to be suspected.

This mental condition which I have often had opportunity of observing, was strikingly illustrated in the general state of a deranged female, who, in 1842, was placed under the care of M. Falret at la Salpêtrière hospital. The patient showed no insanity in her language. Gifted with high intelligence and great tenderness of heart, belonging to a family that had suffered misfortune, but who, in the time of their prosperity had neglected nothing for her education, Virginia Mac—A—e, who had courageously suffered the reverses of fortune, and created for herself a new position, was unable to explain the loss of her moral sensibility and the causes of an inexpressible sadness which left her no other resource but tears.

"The future," she writes, "which presents hope to every reasonable being, offers to my mind an abyss of evils which it is impossible for me to bear. I want nothing; the beings that I most cherish, I wish their death, because I have always seen that that which forms the happiness of others, is my affliction. I, the eldest, who should have been the consolation of the mother whom I so much loved, have caused her nothing but

which throws a dismal gloom upon every object of thought, cuts all the sinews of action, and often gives rise to strange and absurd opinions in

misery. When I experienced the incomprehensible disgust for life, then, lying beside her, I dared propose to her to set fire to the bed, in order that we might die together; she whom I have seen lose her consciousness at the idea only of seeing one of her children die, she who would still sacrifice herself if she could return to me the force and energy that are wanting, I have only the more discouraged, by constantly telling her that we were entirely without hope. The child also, who was formerly my delight, has become an object of indifference. The night is for me more sad than for a criminal whom the laws have condemned to die, because he knows that his life will soon end; whilst in spite of the despair of my soul, in spite of my disturbed sleep, I find myself every day in sound health, and yet without force and without courage. The beautiful sky that God created to delight his children, serves only to sadden still more my thoughts. I would wish to again become a child, to recover the innocence of childhood; why cannot I feel that calm which is sometimes felt in the spring immediately after the winter. I compare myself to a poor woman who has for a long time had nothing but the produce of her hands, whereby to raise up her children, and who, in spite of fatigue and watching, does not abandon them like I abandoned my Marie. I, who am only thirty-four, who am in full possession of strength and health, and who have not power of directing to any useful end the faculties imparted me by heaven."

Such was the position of a patient who now presents us the example of simple melancholy without delirium. In such cases we will observe that this state, so full of agony, is often nothing but a period of transition to systematic delirium; and we will also remark the differences existing between this primitive depression and the incubation of mania, which may, it is true, commence with depression and finish with exaltation, but which, in the greater number of cases, betrays itself in an abnormal activity, and in the development of intellectual aptitudes, which have not been before remarked in the patient. Here, on the contrary, all the faculties appear overwhelmed by the depressive principle. The occupations they most cherished are insupportable to them, and the intellectual labors in which they most excelled, they are unable to perform. The poet loses his art, and the author his skill, the mathematician notes down false numbers, and the artist and the workman no longer possess their aptness for the performance of the mechanical parts or manual of their profession. Nor can it be otherwise. Without doubt, to write and think well we must be under the influence of some emotion, but this emotion should be true and not morbid. Contentment is necessary to every thing, and the most gloomy poetry must be inspired by a kind of spirit, which presupposes both energy and intellectual possessions. True grief has no natural fecundity, that which it produces is nothing but a gloomy agitation which constantly brings back the same thoughts. (See *Traité Théorique et Pratique des Maladies Ment. des M. Morel*, tome i. p. 336. Paris, 1852.)

Melancholy, or "Aliénation partielle depressive," as it has been called by Falret, has, as its name indicates, for its principal characteristic, a depression, slowness and prostration of all the faculties united with general anxiety. This fundamental disposition of the sensibility and intelligence, produces in the greater number of those thus affected, a crowd of analogous consequences. Every thing is viewed by them in a distorted light; all their relations with the external world are changed; they look upon every thing with repulsion and antipathy; they bear with difficulty the kindest remarks of their relations and friends, and consolation itself irritates them. In entire contradiction to nature, the patient cannot retire within himself. He finds nothing within but anxiety, doubt and mistrust, both of himself and others. Every thing seems changed around him. He is often afflicted, and sometimes irritated by it, and thinks the alteration due to those that surround him, rather than to any personal change. Thence come irritation, anger and violence against himself and others. He then abandons the world that injures him, and sinks into complete inactivity.

Frequently it is not only against the world in general, but against his best friends that the patient directs his suspicions, his mistrusts and his hatred. To this general state of depression, anxiety and gloominess succeeds. After this comes both a physical, and moral prostration, in which there is a more or less complete suspension of sensibility and intelligence.

Whilst the sensibility is thus oppressed and affected, the will is equally enfeebled, inactive and powerless. Indecision and slowness of resolution are frequently to be met with, to such a degree as to produce a total want of volition and incapacity of movement. We should note, however, under this head, two principal modes of reaction. In certain cases, the reaction is of no effect; the patient resembles a statue, being insensible and without will. At other times, on the contrary, he is shocked by every

religion, or in other interesting matters. Yet, where there is real worth at the bottom, some rays of it will break forth even in this depressed state of mind. A remarkable instance of this was exhibited in Mr. Simon Brown, a dissenting clergyman in England, who, by melancholy, was led into the belief that his rational soul had gradually decayed within him, and at last was totally extinct. From this belief he gave up his ministerial function and would not join with others in any act of worship, conceiving it to be a profanation to worship God without a soul. In this dismal state of mind he wrote an excellent defence of the Christian religion against Tindal's "Christianity as old as the Creation." To the book he prefixed an epistle, dedicatory to Queen Caroline, wherein he mentions "that he was once a man, but by the immediate hand of God for his sins, his very thinking substance has, for more than seven years, been continually wasting away, till it is wholly perished out of him, if it be not utterly come to nothing." And having heard of her Majesty's eminent piety, he begs the aid of her prayers. The book was published after his death without the dedication, which however, having been preserved in manuscript, was afterwards printed in the "Adventurer." Thus this good man, when he believed that he had no soul, showed a most generous and disinterested concern for those who had souls. As depression of mind may produce strange opinions, especially in the case of melancholy, so our opinions may have a very considerable influence either to elevate or depress the

thing that surrounds him, and react strongly, it may be directly, through the violence of a desire which betrays itself in action, or it may be indirectly, by an incessant instability. A constant desire to complain follows, with groans and laments, which, when it arrives at its maximum, constitutes a grade of exaltation, intermediate between melancholy and mania. Intelligence is enfeebled, and depressed like the sensibility and the will; the capacity for the generation of ideas is enfeebled, their course is diminished, their circle narrowed. The patient talks only of himself and his misfortune; he utters monotonous complaints, and sighs, or pronounces broken words. Sometimes the need of expressing ideas not being felt, he speaks only with difficulty, and sometimes even, instead of answering, he contents himself with a rude and silent movement. Sometimes, also, he speaks a great deal and to every body, but it is only to speak of himself, to give utterance to the same complaints and the same lamentations: he is *morally* what the hypochondriac is *physically*.

The physiognomy is concentrated and anxious, expressing dullness and stupidity, followed by habitual, and sometimes entire silence, and slowness of movement carried sometimes to immobility. These external signs correspond with the internal condition we have just described, and form an exact picture of this kind of mental disease.

Among the melancholics, in fact, some feeling a general anxiety, think they have done a bad action, have committed a crime, suppose themselves reserved for severe punishments, both in this world and the other, and overwhelmed with scruples, they criminate themselves for the most innocent actions of their lives, or imagine themselves possessed by the devil and abandoned of God. Others, in consequence of the sentiment of mistrust which controls them, imagine themselves to be surrounded by spies or invisible enemies, and according to their previous ideas, their education or the age in which they live, think themselves under the power of sorcery, magic, magnetism, the police, &c. Others, entirely wrapped in their sadness, think themselves ruined, accused, dishonored or even betrayed by their relations and friends. In a word, the delirious ideas which become the centre of the greater part of the pre-occupations of the intelligence and of the feelings, and which appear, at first sight, to constitute all the delirium, are in reality only the relief to the general condition which gives birth to them. In spite of their infinite variety, they all partake of the general character of the disease.

There is not, then, in Melancholy, as has often been asserted, a concentration of the attention, or even of all the moral and intellectual powers, upon one sad idea, but a general state of sadness and depression which shapes itself in one predominant idea, and manifests itself by a crowd of other morbid phenomena. (See *Leçons Cliniques sur l'Aliénation Mentale*, de M. Falret. Leçon 9. Paris, 1854.)

mind, even where there is no melancholy. Suppose, on one hand, a man who believes that he is destined to an eternal existence; that He who made and who governs the world, maketh an account of him, and hath furnished him with the means of attaining a high degree of perfection and glory. With this man compare, on the other hand, the man who believes nothing at all, or who believes that his existence is only the play of atoms, and that after he has been tossed about by blind fortune for a few years, he shall again return to nothing. Can it be doubted that the former opinion leads to elevation and greatness of mind, and the latter to meanness and depression?"(j)

§ 165. "A pleasant season," says Dr. Rush, "a fine day, or even the morning sun, often suspend the disease. Mr. Cowper, who knew all its symptoms by sad experience, bears witness to the truth of this remark, in one of his letters to Mr. Haly. 'I rise,' says he, 'cheerless and distressed, and brighten as the sun goes on.' Its paroxysms are sometimes denoted 'low spirits.' They continue from a day, a week, a month, a season, to a year, and sometimes longer. The intervals differ—1, in being accompanied with preternatural high spirits; 2, in being attended with remissions only; and 3, with intermissions, or, in other words, in correctness and equanimity of mind. The extremes of high and low spirits, which occur in the same person at different times, are happily illustrated by the following case: A physician in one of the cities of Italy, was once consulted by a gentleman who was much distressed with a paroxysm of this intermitting state of hypochondriasm. He advised him to seek relief in a convivial manner, and recommended him in particular to find out a gentleman of the name of Cardini, who kept all the tables in the city, to which he was occasionally invited, in a roar of laughter. 'Alas! sir,' said the patient, with a heavy sigh, 'I am that Cardini.' Many such characters, alternately marked by high and low spirits, are to be found in all the cities in the world."(k)

In melancholy the patient on the one hand is fully convinced that his notions and wishes ought to be realized; but on the other he feels the impossibility of affecting their realization. He therefore makes no effort to render possible the impossible; yet he cannot resign the ideal, which he bears in his bosom; he loves his fictions, or the objects of his wishes so much, that he cannot part with them. Thus he consumes his existence in a monotonous grief; he cannot take interest in any thing except the object of his sadness.(l)

## 2nd. *Hypochondria*.(m)

§ 166. When the morbid despondency noticed under the last head extends to the general tone of bodily sensations, a condition is produced

(j) Reid on the Active Powers of Opinion, pp. 576.

(k) Rush on the Mind, pp. 82, 83.

(l) Rauch's Psychology, 151.

(m) See Krahmer Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 109; Siebold, Lehrbuch der Gericht. Med. Berlin, 1747, § 208; See De L'Hypochondrie et du Suicide. Par J. P. Palfret. Paris, 1822; Renaudin sur L'Aliénation Mentale, p. 99. Paris, 1854. See also on this point the following works: Confessions of an Hypochondriac, or the Adventures of a Hypochondriac in search of Health. Saunders & Otley, London, 1849; Review of same, Journ. of Psychol. Med. vol. 3, p. 1.

which we commonly call *hypochondria*. In the inferior stages the patient retains sufficient self-control to conceal and forget his condition, and proceed unhindered in his occupations; but in the higher degrees he becomes so absorbed in his bodily sensations as to exhibit it in his appearance and conduct, disregarding every effort made to raise his spirits, and reducing all his reflections to the common machinery of personal questions and answers.<sup>(n)</sup> As this sort of selfishness increases, the mind is often filled with envy, hatred, bitterness, suspicion, and revenge towards others, and particularly towards those in whom the patient believes himself to detect a want of sympathy, or even of respect, or whom he regards as the authors of his distress. The result of this is too apt to be a series of unjust surmises and accusations, personal ill-treatment of others, and even murderous threats and assaults against their supposed wrong-doers, as well as the commission of suicide. In the judicial scrutiny and consideration of such a case, it is essential to inquire how far and for what length of time the attention of the patient can be directed from his bodily feelings to other objects; what is his personal opinion of his own condition; whether any, and if any, what insane ideas possess his mind, and what is his general demeanor. Where the perceptive faculty was not so far involved in the progress of the disease as to falsify the impressions of the senses, and deprive the consciousness of the power of correcting them, the reasons are wanting for deciding against the responsibility of the agent; but the judge, in passing sentence, will nevertheless take into account the morbid impulse, which was a subsidiary cause in the commission of the crime.<sup>(o)</sup>

§ 167. Sometimes, as we are told by Dr. Rush, the pain of a bodily disease suspends, for a short time, the mental distress. Mr. Boswell, in his life of Dr. Johnson, relates a story of a London tradesman who, after making a large fortune, retired into the country to enjoy it. Here he became deranged with hypochondriasis, from the want of employment. His existence became finally a burden to him. At length he was afflicted with the stone. In a severe paroxysm of this disease a

(n) Ellinger, p. 105.

(o) See the above views in Schürmayer, *Gericht. Med.* § 542.

The following description of the hypochondriacal character is to be found in the *Médecine Légale de M. Orfila*. Tome I. p. 416. Paris, 1848.

Hypochondriacs are above all remarkable for their exaggerated fears upon the state of their health—and the foolish ideas they give utterance to in expressing their sufferings. Their temper is very unequal, they pass almost without motive from hope to despair, from grief to gaiety—from bursts of passion to gentleness, from laughter to tears; many are timid, pusillanimous, fearful, morose, irascible, restless, hard to please, a torment and fatigue to every body. They are easily moved, a trifle vexes and agitates them, producing fears, torments, and attacks of despair. The greater number show a marked change in their affections, they are egotistical, the slightest motives cause them to pass from attachment to indifference or to hate. They are often susceptible of an exaltation or depression of spirits, of a rapid succession of the most opposite ideas and emotions, without the will being able to control the thought.

But those thus affected have a very good judgment in whatever relates to their own interests, and generally in every thing which is foreign to their health, unless the disease should finish in a total loss of reason, a thing which is of very rare occurrence. It is only the character above described which renders hypochondriacs more likely to yield to fear, and more easily moved to contract engagements; suggestive and inveigling measures exercise considerable influence upon their mind. Finally, the jealous, suspicious, irritable, headstrong character of hypochondriacs would be an extenuating circumstance, if, under a first impulse, they should commit a reprehensible act.

friend sympathized with him. "No, no," said he, "don't pity me, for what I now feel is ease, compared with the torture of mind from which it relieves me." A woman in this city bore a child, while she was afflicted with this disease. She declared immediately afterwards that she felt no more pain from parturition than from a trifling fit of the colic. Where counteracting pains of the body are not induced by nature or accident to relieve anguish of mind, patients often inflict them upon themselves. Walking barefooted over ground covered with frost and snow was resorted to by a clergyman of great worth in England for this purpose. Carden, an eminent physician of the 15th century, made it a practice to bite his lips and one of his arms, in order to ease the distress of his mind. Kempfer tells us that prisoners in Japan, who often became partially deranged from distress, used to divert their mental anguish by burning their bodies with moxa; the same degree of pain, and for the same purpose, is often inflicted upon the body, by cutting and mangling it in parts not intimately connected with life. But bodily pain, whether from an accidental disease, or inflicted by patients upon themselves, is sometimes insufficient to predominate over the distress of their minds. Dr. Herberden mentions an instance of a man who was naturally so afraid of pain, that he dreaded even being bled, who in a fit of low spirits cut off his penis and scrotum with a razor, and declared after he recovered the natural and healthy state of his mind, that he felt not the least pain from that severe operation. A similar instance of insensibility to bodily pain is related by Dr. Ruggieri, an Italian physician, of a hypochondriac madman, of the name of Louvel, who fixed himself on a cross and inflicted the same wounds upon himself, as far as he was able, that had been inflicted upon our Saviour. He was discovered in this situation and taken down alive. During the paroxysms of his madness he felt no pain from dressing his wounds, but complained as soon as they were touched, in the intervals of his disease.<sup>(p)</sup>

Dr. Haindorft, in his German translation of Dr. Reid's "Essay on Hypochondriasis," in alluding to the possibility of a patient laboring under hypochondriasis being able, by an exercise of the power of volition, to control his morbid sensations, justly observes, "We should have fewer disorders of the mind if we could acquire more power of volition, and endeavored by our own energy to disperse the clouds which occasionally arise within our own horizon: if we *resolutely tore the first threads of the net* which gloom and ill-humor may cast around us, and made an effort to drive away the melancholy images of a morbid imagination by incessant occupation. How beneficial would it be to mankind if this truth were universally acknowledged and acted upon, viz: that our state of health, mental as well as bodily, principally depends upon ourselves!"

"By seeming gay we grow to what we seem."

It was the remark of a man of great observation and knowledge of the world, "Only wear a mask for a fortnight, and you will not know it from your real face."<sup>(q)</sup>

<sup>(p)</sup> Rush on the Mind, pp. 90, 91, 92.

<sup>(q)</sup> Winslow's Anatomy of Suicide, pp. 169, 170.

§ 168. A late French writer mentions the case of a rich peasant who was possessed with the idea that he was bewitched, and who complained to his medical attendant that seven devils had taken up their abode in his body. "Seven, not more?" was the physician's inquiry. "Only seven," was the reply. The physician promised him to rid him of the visitors, one each day, upon condition that for the first six he was paid twenty francs, but for the seventh, who was the chief of the band, forty. The patient agreed, and was subjected by the physician, who set apart the fee for charity, to a series of daily shocks from the Leyden jars, the seventh and last of which was so powerful as to produce a fainting fit in the supposed demoniac, who, however, awoke from it entirely freed from his delusion. (r)

Burns suffered much from indigestion, producing hypochondria. Writing to his friend, Mr. Cunningham, he says: "Can'st thou not minister to a mind diseased? Can'st thou speak peace and rest to a soul tossed on a sea of troubles, without one friendly star to guide her course, and dreading that the next surge may overwhelm her? Can'st thou give to a frame, tremblingly alive to the tortures of suspense, the stability and hardihood of a rock that braves the blast? If thou can'st not do the least of these, why would'st thou disturb me in my miseries with thy inquiries after me?" From early life, the poet was subject to a disordered stomach, a disposition to headache, and an irregular action of the heart. He describes, in one of his letters, the horrors of his complaint:—"I have been for some time pining under secret wretchedness. The pang of disappointment, the sting of pride, and some wandering stabs of remorse, settle on my life like vultures, when my attention is not called away by the claims of society, or the vagaries of the muse. Even in the hour of social mirth, my gaiety is the madness of an intoxicated criminal under the hands of an executioner. My constitution was blasted, *ab origine*, with a deep incurable taint of melancholy that poisoned my existence." (s)

### 3. *Hysteria*. (t)

§ 169. *Hysteria*, which only attacks individuals of the female sex, or males having a feminine organization, resembles hypochondria in its mental and moral symptoms; but the nauseous and painful feelings manifest themselves in convulsions, and the alternation between the different states of feeling is far more abrupt. (u)

(r) *Démonomanie, singulière guérison*. Annales mèd. psychol. 1847.

(s) Winslow's Anatomy of Suicide, p. 147-48.

(t) Siebold, Lehrbuch der Gericht. Med. Berlin, 1847, § 208; Krahmer Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851. § 110.

(u) Schürmayer, Gericht. Med., § 543; Krahmer. Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851. § 109.

Burton, in his Anatomy of Melancholy, has described this state: "They are soon tired with all things; they will now tarry, now begone; now in bed they will rise, now up, then they go to bed; now pleased, and then again displeased; now they like, by-and-by they dislike all, weary of all. 'Sequitur nunc vivendi, nunc moriendi, cupido,' saith Aurelianus. Discontented, disquieted upon every light occasion or no occasion, often tempted to make away with themselves; they cannot die, they will not live; they complain, weep, lament, and think they live a most miserable life; never was any man so bad. Every poor man they see is most fortunate in respect of them. Every beggar that

4. *Melancholy.*(v)

§ 170. The state of depression undergoes a change, in consequence of which the complaints of bodily indisposition diminish, and the patient comes to regard his former sufferings as delusions, and his present condition as a healthy one. When such a person is found to have com-

comes to the door is happier than they are. Jealousy and suspicion are common symptoms of this misanthropic variety. They are testy, peevish, distrustful, apt to mistake, and ready to snarl, upon every occasion and without any cause, with their dearest friends. If they speak in jest, the hypochondriac takes it in good earnest; if the smallest ceremony be accidentally omitted, he is wounded to the quick. Every tale, discourse, whisper, or gesture, he applies to himself; or if the conversation be openly addressed to him, he is ready to misconstrue every word, and cannot endure that any man should look steadfastly at him, laugh, point the finger, cough, or sneeze. Every question or movement works upon him and is misrepresented, and makes him alternately turn pale or red, and even sweat with distrust, fear, or anger."

And thus says Charles Lamb :

“ By myself walking,  
To myself talking;  
When, as I ruminat  
On my untoward fate,  
Scarcely seem I  
Alone sufficiently :  
Black thoughts continually  
Crossing my privacy;  
They come unbidden;  
Like foes at a wedding,  
Thrusting their faces  
In better guests' places;  
Peevish and malcontent,  
Clownish, impertinent,  
Dashing the merriment.  
So, like the fashions,  
Dim cognitions  
Follow and haunt me,  
Striving to daunt me;  
In my heart festering,  
In my ears whispering,  
'Thy friends are treacherous,  
Thy foes are dangerous,  
Thy dreams are ominous.' ”

Fierce Anthropophagi,  
Spectra Diaboli,  
What scared St. Anthony;  
Hobgoblins, Lemures,  
Dreams of Antipodes,  
Night-riding incubi,  
Troubling the fantasy,  
All dire illusions  
Causing confusions;  
Figments heretical,  
Seruples fantastical,  
Doubts diabolical.  
Abaddon vexeth me,  
Mahro perplexes me,  
Lucifer teareth me,

Jesu! Maria! liberate nos ab his dire tentationibus inimici.—*Miscellaneous Poems*, p. 6. Ed. Moxon: 1841. *Mind and Matter*. By J. G. Millingen, M.D., M.A. pp. 76, 77, 78.

(v) Siebold. *Lehrbuch der Gericht. Med.* Berlin, 1847. § 208. Dr. Cheyne, rather jocularly than otherwise, applied the term, “The English Malady,” to that species of melancholy which is most affected by the weather and by other depressing circumstances. This term has been seized upon by Siebold, *Gericht. Med.* § 212, *Melancholia Anglica*, sive Autochira. Fr. B. Osiander, in his interesting volume on Suicide, discusses the same topic. Hannov. 1813. 8. § 207.



mitted an act forbidden by the penal code, it may be assumed, without hesitation, that his liberty of action is gone. In the higher degrees of melancholy, the various gloomy and morbid feelings are accompanied by distinct imaginings, which take their character from the sort of agitation in which the disease commenced, the general opinions and character of the individual, the pursuits which last occupied him, and the dread and bitter experience which has produced them.<sup>(w)</sup> For all these feelings the patients seek explanations, and find them either *in themselves* (*melancholia concentrica*), or in *surrounding* things and circumstances (*melancholia peripherica*). In the *former* case they take themselves severely to task for small or inconsiderable errors, or declare, with an air of so much conviction, calmness, and firmness, as sometimes to mislead the judge himself, that they have committed great crimes, as murder, &c., and have incurred, by their own inexpiable fault, the displeasure of God and of the world, and eternal damnation. In *melancholia religiosa* they ask to be tried and punished; they complain of the loss of what is most dear to them, apprehend poverty for themselves and their families in the future, or even imagine themselves possessed by demons. In *mel daemonia*, they accuse other persons of malevolence and persecution, to which they ascribe their ailments. It is characteristic of the general phase that the patient never sees surrounding things as they are, but always in a light corresponding to his gloomy frame of mind; frequently, also, this false coloring turns into a real illusion of the senses, particularly in the peripheric form of the disease, which is the reason that it so frequently ends in lunacy. The external conduct of the patients, the manner in which they execute the dictates of their wills, is very various. In *melancholia attonita* they sit motionless and speechless; in other cases, they can hardly find words enough to depict their distraction; sometimes they are perpetually in motion—*melancholia activa et errabunda*. In peripheric melancholy they scold and swear about their grievances, become noisy and excited, and resort to violent means of resistance or revenge. In this manner, melancholy often becomes the occasion of murderous assaults, and sometimes murders of the most cruel kind, as well as of suicide.<sup>(x)</sup>

§ 171. In a mature case falling under this head, the motives are often not even present to the consciousness, and the act is committed in a state of intoxication, blind frenzy, fury, and confusion, preceded sometimes by the almost imperceptible symptoms of silent depression, sometimes by the traces broad and deep of havoc in the affective faculties, and accompanied often by a sudden loss of self-control, visible paroxysms of terror, and a fancied pursuit by fiends.<sup>(y)</sup> The transition from melancholy to mania is open to the simple explanation, that depression is the first stage of psychical disease in general, and contains within itself the germs of all other phases.<sup>(z)</sup>

§ 172. In other cases there is also an absence of conscious motives, but in their place an uncontrollable restlessness, an indistinct but over-

<sup>(w)</sup> Schürmayer, *Gericht. Med.* § 544; compare Ellinger, p. 108; *Leçons Cliniques sur l'Aliénation Mentale*; Falret, *leçon 7th*, p. 185. Paris: 1854. *Etudes Médico Psychologiques sur l'Aliénation Mentale*. L. F. E. Renaudin, chap. iv. p. 178. Paris: 1854.

<sup>(x)</sup> The above summary is taken from Schürmayer. *Gericht. Med.* § 544.

<sup>(y)</sup> Ellinger, p. 112.

<sup>(z)</sup> Schürmayer, *Gericht. Med.* § 545.

awing feeling of dread, and an incessant morbid approach of those abnormal moral propensities which will be considered under the next head. Ellinger correctly observes (*a*) that, "impulses of this kind often excite the most desperate struggles in the mind; evoke the most various external means to overcome them; place the murderous instrument into the hands of the individual, from which reason wrests it again; drive him into solitude and far from the subject of the mad desire, and induce him to give warning to the threatened victim; to meditate and to attempt suicide; and when at last the fatal deed is nevertheless accomplished, there is a calmness and a clearness in the manner in which he anticipates the impending punishment, which to an unpracticed observer must exclude every idea of an underlying mental derangement. Such subjects either betray the ordinary symptoms of depression, or only those incident to the specific propensity, which throws the consciousness into a state of distraction, and fills the mind with fear and dread. In either case, the impulse, whether preceded or not by a brief relaxation, comes suddenly, in which case it will be found in connection with disturbances of the bodily functions, among which may be enumerated cessation of the natural period or of other natural or ordinary evacuations, rush of blood to the head, exhaustion by loss of blood, protracted nursing, excesses, epilepsy, approach of severe attacks of sickness. The *immediate* occasion of the act may be the view of a naked figure, the sight of an execution, of blood, of a murderous instrument or other means of committing crimes, or the recital of such an occurrence; the *ultimate* cause is found, according to Ideler, in the associations of feelings and desires according to their contrast, and the struggle and contradiction thus arising."

§ 173. In still another order of cases, as we are told by Schürmayer, the consciousness is not only in full possession of the motives, but the act is conceived on the ground of a chain of reasoning and executed with a degree of arrangement and circumspection apparently inseparable from a clear state of the understanding. Here, as will be seen more fully hereafter, the motives are sometimes hallucinations, particularly of the ear, (voices heard) which give commands to the madman, sometimes a wish to die without the courage to commit suicide directly, but with the design of incurring capital punishment by the murder of others, (persons the subjects of an old grudge, or such as are entirely innocent, as children;) sometimes the notion that the destruction of the world is at hand, or that a terrible misfortune impends, against which it was necessary to protect the object of particular affection, which is best effected by death. In the latter case, as will presently be more fully seen, (*b*) suicide, or self-ineulcation, is common, and sometimes a vindictive feeling against the supposed authors of the person's suffering, which the mind often debates with itself for a length of time, until all doubt is removed by some new hallucination. (*c*)

Attacks of hysteria, although in appearance bearing considerable analogy to those of epilepsy, rarely produce a state of complete insen-

(*a*) Ellinger, p. 114.

(*b*) *Post* § 206-208, 247-253.

(*c*) Schürmayer, § 547; Ellinger, p. 116; Siebold, *Lehrbuch der Gericht. Med.* Berlin, 1847, § 208; Krahmer *Handbuch der Gericht. Med.* Halle. C. A. Schwetschke, 1851. § 110.

sibility, and although they may last longer, they never leave behind them that bewilderment of mind. However frequently they may occur, they hardly ever produce mania or dementia, and therefore they rarely exclude responsibility. (*d*)

## VI. MENTAL UNSOUNDNESS, AS AFFECTING THE MORAL SYSTEM.

### 1st. *General Moral Mania.*

§ 174. As depression is based upon an unduly subdued state of the feeling of self and a want of self-confidence, so the fundamental trait of mania, considered in its present relation, is an exaggeration of the feeling of self and of self-confidence. (*e*) Unsoundness of mind rarely takes this form at first; it is usually developed from depression, the mistaken idea usually reversing its purport, while the impulses of expression in some manner overstep their normal limits, compelling the will to act in a corresponding manner. Here the madman either makes constant motions with his head or his arms, or runs about until he is completely exhausted, which might be called the *madness of motion*; (*f*) or he vents his humor in gestures and declamations, or the motive impulse is confined to the tongue, and becomes morbid garrulity or *madness of the tongue*. This talkativeness is not the effect of a superabundance of ideas, but all the thoughts are uttered hastily as they occur, without being shaped or sifted, giving rise to contradiction, incoherence, and the semblance of a wandering imagination. If in the end the malady is imparted not only to the will but also to the sentiments, the undefined impulse of action and expression receives the form and color of chagrin and anger, which the sufferer supposes to be well founded and directed to real objects, and the disease becomes frenzy or fury, which may take some specific form, as that of general destructiveness, or of a thirst for blood. This also includes many unnatural cravings, such as a desire to bite, or to do something extravagant; a sort of mental or moral vertigo, which develops itself sometimes, though more rarely in the propensity to steal. In cases of this class it is impossible for the patient to resist the morbid impulse. He has lost his self-possession, that is, the power of contrasting the necessary consequences of the action with his present position and its requirements, and the calculations of prudence, as well as the impulses of conscience, are alike unheeded. The morbid sentiment thus controls his entire perceptive faculty, admitting of no other perception in connection with the subject, and cutting off all reflection, all doubt of the fitness of the action and its relation to the laws of the land. (*g*)

§ 175. In the lower stages of mania there is generally so much external self-control, and such a connection and logical consistency in the ideas, that the process of mental evolution becoming more compact and rapid, produces a vivacity of combination, of memory, and imagination,

(*d*) Briand, Méd. Lég. p. 569. Paris, 1852.

(*e*) See Schürmayer, Gericht. Med. § 548.

(*f*) Compare Hagen in R. Wagner's *Handwörterbuch der Physiologie*. Vol. II. p. 819.

(*g*) Schürmayer, Gericht. Med. § 548.

that a layman is not easily induced to suspect to arise from a disorder of the reasoning faculties, particularly when external circumstances concur to furnish an explanation of the condition in which the person is found. This may throw difficulties around the medico-legal consideration of such a case, and under such circumstances the true view in those penal systems where the correct principle is observed of graduating the punishment of the insane to the degree of their freedom of agency and consequent responsibility, is to declare moral responsibility in its common-law sense to have ceased. It happens that the offences committed during and in consequence of mental aberrations of this description, are either petty misdemeanors, or of a nature to call for the interference of the police only, or resolve themselves into mere civil questions, or into objections to the competency of witnesses. The higher grades of mania involve far more serious considerations of responsibility for any action, which will presently be fully considered. (*h*)

§ 176. "In this form of insanity," says Dr. Ray, "the derangement is confined to one or a few of the affective faculties, the rest of the moral and intellectual constitution preserving its ordinary integrity. An exaltation of the vital force in any part of the cerebral organism, must necessarily be followed by increased activity and energy in the manifestations of the faculty connected with it, and which may even be carried to such a pitch as to be beyond the control of any other power, like the working of a blind instinctive impulse. Accordingly, we see the faculty thus affected, prompting the individual to action by a kind of instinctive irresistibility, and while he retains the most perfect consciousness, of the impropriety and even enormity of his conduct, he deliberately and perseveringly pursues it." (*i*)

The following cases are given us by Ray, in which this perversion of the moral faculties was accompanied in its latter stages by some delusions, furnishing a striking illustration of this form of disease, as well as its intimate connection with intellectual mania:—

Col. M. was a man of superior intellectual powers, and moved in the higher walks of society. He was a lawyer by profession, and was appointed district-attorney in one of the south-western states by President Jackson, whom he had previously served in a military capacity. Towards the meridian of life, his conduct became so disorderly and boisterous, that he was often confined in jails or hospitals for the insane. On one of these occasions he cut off his nose, and subsequently came to Boston in order to have it replaced by Dr. J. Mason Warren, by means of the rhinoplastic operation, which proved quite successful. While in Boston he made the acquaintance of Dr. Bell of the McLean Asylum, for the purpose, as he declared, of getting his aid in obtaining redress for the wrongs he had sustained in being placed under guardianship, and confined in jails and hospitals, his object being not to retaliate, but to protect his future reputation. The Dr. has kindly furnished such particulars of his case as came to his knowledge from various sources. "I inferred that he was naturally of a proud, arrogant, and

(*h*) Kraemer. Handbuch der Gericht. Med. Halle. G. A. Schwetschke, 1851. § 110. Siebold, Lehrbuch der Gericht. Med. Berlin, 1847. § 208.

(*i*) Ray on Insanity, 189.

extravagant spirit, which was kept in check, while she lived, by the discretion of his wife. He was sensual but not intemperate, until his nervous system had become excited. His peculiar theory was, that while he admitted that he had held—and, towards the last of my interview, avowed that he then held—certain fanciful notions which we might term delusions, if we pleased, still they were such as did not interfere with his right to entire liberty of action. ‘For instance,’ said he, ‘I feel that I am cousin to the Duke of Wellington and to Napoleon. It seems ridiculous. I can’t make it out by any kind of proof. I even laugh at it. But still, I dwell upon it as a reality. It concerns nobody else. It has in it no dangerous element. Why, then, should I be interfered with for harboring a delusion, if you choose to call it so, no more absurd than a thousand religious sects feel themselves happy in resting upon.’ He would often argue thus: ‘I protest against being called insane on account of my ideas. For my actions I am accountable. I never yet claimed—I never will claim—immunity as an irresponsible being. I will permit no one to set up such a defence for me. Try me by the laws of the land and the strict rules of evidence, and I will abide by the result, as a good citizen; but I must have opportunity to argue my own cause, and examine the witnesses brought before me.’

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

“He had most carefully considered the extent of his rights,—the precise amount of force justifiable in ejecting an unwelcome guest, or, what was a more common event, in resisting an ejection; the obligation of innholders to receive applicants, and the value of proving the first blow in defence of assaults. On one occasion thinking the hackmen and cab-men of New York were insolent and exacting in regard to the right of way, he armed himself with a heavy whip, took a good witness by his side, and drove through Broadway in a strong carriage, running against every charioteer who failed to give him his exact half of the road. This, of course, produced a collision of tongues as well as wheels. His peculiarly sarcastic language tempted a touch of the whip from some of his opponents, and upon this, our hero turned to and thrashed them within an inch of their lives. They appealed to the courts, but his witness soon and truly proved the aggression on them.

“While in the Pennsylvania Hospital for the insane, and again, I

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

“After he became so wild in his conduct in Boston as to be a universal annoyance, I advised his friends in Missouri to place him under care as a lunatic. They replied that the thing was impracticable; that no institution had been found able to hold him, and they would not arouse his vindictive feelings by any farther trials of that sort. His intemperate habits increased, and his delusions became more palpable, yet without affecting his intellectual power. The idea returned that parts of his face, if removed, would grow again, and he cut out the cicatrix on his forehead whence the nasal flap had been taken. Fortunately death stepped in at this point, and removed a man whose fate was so melancholy; for, under all the ravages of mental disease, there were traces of noble sentiments and lofty aspirations.” (j)

## (2.) *Monomania.* (k)

§ 177. The observation that, in many cases of insanity, particular impulses, such as sexual appetite, acquisitiveness, &c., attain a predominance, has led to the adoption of the term *monomania*, (l) which is occasionally subdivided into heads, which will presently be noticed. This, however, is only admissible in so far as it designates certain fixed objects towards which the ravings of the maniac are directed, and which supply the apparent motives of his actions; *it is not to be supposed that a single impulse is diseased, while all the other functions of the mind retain their healthy action.* While the entire intellect enjoys sound health, there is nothing in which a morbid desire of theft, murder, &c., could originate, and such a phenomenon is a psychological impossibility, and the assumption of such requires a psychological contradiction. A

(j) Ray on Insanity, pp. 181, 2, 3, 4.

(k) See 4 Am. Jour. of Ins. 16.

(l) Schürmayer, Gericht. Med. § 549.

*mania sine delirio*, a mania without a morbid participation or disturbance of the perceptive faculties, is therefore out of the question, as a desire to injure or destroy is impossible without an act of the mind by which this purpose is entertained, and as reason and understanding are alike disordered whether they insinuate a wrong motive for the morbidly conceived purpose of the act, or whether they entirely omit the suggestion of any reason whatever. (*m*)

§ 178. The dispute about the reality and possibility of a *mania sine delirio* continues, because the facts adduced in support of this form of unsoundness of mind are not denied as effective causes, but are subjected to different interpretations of their psychological significance; different conclusions being drawn as to the kind of hyper-physical function producing them. Inasmuch as a direct inspection of the condition of a mental or moral function is impossible, our knowledge of it being confined to the result of inferences from effects to causes, the first requisite, to avoid incorrect deductions, is a severe analysis of the fact from which the inference is to be drawn. This fact consists mainly in the statements and assurances of the persons concerned, that they are conscious of the wrongfulness or unreasonable nature of the act they are committing, but that the impulse to commit it is stronger than their will to resist. Is this really the case? May there not be a delusion in the statements themselves? As it is not the mental condition obtaining immediately before and after the commission of the offence which is in question, but that which obtains at the moment of the *raptus maniacus*, we may not be certain that the individual judges correctly, or is even competent to judge correctly, of himself. (*n*)

§ 179. The *mania sine delirio* appears to have been first mentioned by Ellinger, under the name of *melancholia sine delirio sive perturbatio mentis, melancholia sine delirio*. Pinel subsequently called it *manié sans delire*, after having made the assertion, based upon facts, "that there are madmen in whom there is no perceptible alteration of the intellectual process, of the perceptions, judging faculty, imagination, or memory, and yet a perversion of the manifestations of the will, in a blind impulse to the commission of violence, or even of bloodthirsty rage, without any assignable dominant idea, any delusion of the imagination, which could cause such a propensity." Where there is no will, but only a blind impulse, a *perversion of the manifestations of the will* is not to be supposed. The results hitherto arrived at in the discussion of this subject, may be compressed into the following three points:

§ 180. (1.) Shortly *before* the attack self-consciousness may be present, and connected with the impulse to the commission of violence; and immediately *after* the attack, self-consciousness may return; but it remains to be proved, that it was also undisturbed *during* the attack.

(*m*) Schürmayer, Gericht. Med. § 549.

(*n*) See, on this head, Principles of Medical Psychology, being the Outlines of a Course of Lectures by Baron Ernst von Feuchtersleben, M. D., Vienna, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by B. G. Babbington, M. D., F.R.S., etc. London: Printed for the Sydenham Society, 1847. pp. 224, 374, 292.

(2.) *In* the attack, at all events, the power of self-control is to be regarded as suspended.

(3.) Many of the cases classed under the head of *mania sine delirio* are to be eliminated, and referred to the categories of morbid irascibility, of remittent and irregularly returning and transitory mania, of depression and partial insanity, in which the hallucinations impelling to the act are kept secret.

§ 181. As we have already shown, the present tendency of judicial practice is, when the defence of monomania is set up, to tell the jury that if they believe that the act was committed under an involuntary and uncontrollable insane impulse, the defendant is entitled to an acquittal on this particular ground.<sup>(o)</sup> It is proper, however, that the jury in those States in which there is provision made for the treatment of insane offenders, should make a special finding, so that the statutory confinement may be imposed. The importance of a specific form of imprisonment for insane convicts, will be hereafter considered.<sup>(p)</sup> That of the responsibility of monomaniacs, has been noticed already.<sup>(q)</sup>

§ 182. It is proper to notice that the term "Monomania" is used by high authority in a wider sense than that given above. Thus Dr. Taylor declares it to be that form of insanity in which the mental alienation is partial. The delusion is said to be confined either to one subject or to one class of subjects. One fact is well ascertained, that monomania varies much in degree; for many persons affected with it are able to direct their minds with reason and propriety to the performance of their social duties, so long as these do not involve any of the subjects of their delusions.<sup>(r)</sup> "Monomania," we are told by the same high authority, "is very liable to be confounded with *eccentricity*; but there is a difference between them. In monomania there is obviously a change of character—the individual is different to what he was; in eccentricity such a difference is not remarked; he is and always has been singular in his ideas and actions. An eccentric man may be convinced that what he is doing is absurd and contrary to the general rules of society, but he professes to set these at defiance. A true monomaniac cannot be convinced of his error, and he thinks that his acts are consistent with reason and with the general conduct of mankind. In eccentricity there is the will to do, or not to do; in real monomania the controlling power of will is lost. Eccentric habits suddenly acquired are, however, presumptive of insanity."<sup>(s)</sup> Recently, however, the entire theory of moral insanity<sup>(t)</sup> has lately been combated by very able writers, among whom may be noticed Heinrich,<sup>(u)</sup> Leubuscher<sup>(v)</sup> and Mayo.<sup>(w)</sup>

§ 183. On the other hand, this theory has, though no longer receiving uniform approbation in the land where it was first recognized, met with an increased support in our own country. It has been expressly recognized by two of our most eminent jurists, Chief Justice Gibson and

(o) See *ante*, § 53. (p) See *post*, § 259-276. (q) See *ante*, § 53-61.

(r) Taylor's Medical Jurisprudence, p. 553. (s) *Ibid.* (t) Pinel's *Mania sine delirio*.

(u) Kritische Abhandlung über die von Prichard als Moral Insanity geschilderte Krankheitsform. *Allgem. Zeitschr. für Psychiatrie*, V. Bd. 4 Hft.

(v) Bemerkungen über Moral Insanity und ähnliche Krankheitszustände. *Casper's Wochenschr.* Nr. 59 u. 51.

(w) *Medical Test. and Ev. in Cases of Lunacy*. London, 1854.



Chief Justice Lewis, of Pennsylvania, who, at the same time, happen to be among all recent American legal authorities, the two who have been most addicted to the study of diseases of the mind.<sup>(x)</sup> And Dr. Ray, to whose skill, experience and capacity, too high a standard can scarcely be assigned, says: "In fact it has always been observed, that insanity as often affects the moral as it does the intellectual perceptions. In many cases there is evinced some moral obliquity quite unnatural to the individual, a loss of his ordinary interests in the relations of father, son, husband, or brother, long before a single word escapes from his lips, "sounding to folly." Through the course of the disease, the moral and intellectual impairments proceed *pari passu*, while the return of the affections to their natural channels is one of the strongest indications of approaching recovery. Such being the fact, it ought not to be a matter of surprise that in some cases the aberration should be confined to the moral impairment, the intellectual, if there be any, being too slight to be easily discerned."<sup>(y)</sup>

§ 184. "The reality and importance of this distinction," says the same author subsequently, "which thus establishes two classes of mania, is now generally acknowledged by practical observers, among whom it is sufficient to mention Esquirol, Georget, Gall, Marc, Rush, Reil, Hoffbauer, Andrew Combe, Conolly, and Prichard, though some of them are inclined to doubt whether the integrity of the understanding is as fully preserved in moral mania, as Pinel affirmed. Still, its apparent soundness, and the difficulty, at least, of establishing the existence of any intellectual derangement, while the moral powers are unequivocally and deeply deranged, render it no less important in its legal relations, than if the understanding were unequivocally affected. It is defined by Prichard, who has strongly insisted on the necessity of assigning it a more distinct and conspicuous place, than it has hitherto received, as 'consisting in a morbid perversion of the natural feelings, affections, inclinations, tempers, habits, and moral dispositions, without any notable lesion of the intellect or knowing and reasoning faculties, and particularly without any maniacal hallucination.' It will be convenient, even if not scientifically precise, to consider it under two divisions, according as it is general or partial."<sup>(z)</sup>

(x) See Note, § 53, 54, 55.

(y) Ray on Insanity, p. 166.

(z) Ray on Insanity, p. 167. Instinctive mania, (*manie raisonnée* of Pinel,)—we quote generally from Morel—includes homicidal and incendiary monomaniacs, &c. Those thus affected seldom complain of being tormented with hallucinations of the senses, but are subject to indefinable pains which betray themselves exteriorly in headaches, roaring in the ears, dazzlings and indescribable sensations. If we sometimes see in them perfect digestive powers or an exaggerated appetite, the opposite phenomena of want of appetite, depraved tastes, &c., are much more frequent symptoms. They feel an incessant need of movement, an activity out of all proportion with their physical forces, alternating with an insurmountable apathy. If, under certain circumstances, the absence of sleep astonishes us, we, on the contrary, often observe them in a torpid and almost death-like state. Sometimes their sensibility is so exalted that the whole exterior world becomes for them nothing but a source of pain, anguish, and irritability. Sometimes the most unhappy sensations, and the most painful emotions do not seem to affect either their physical or moral nature.

When these patients are brought into a court of justice they are unanimous in attributing the same motives to their actions. They accuse themselves of irresistible impulses, they are ignorant why they so acted, and in this respect are very different from

§ 185. Monomania, as affecting the moral sense, will be considered under the following heads:—

- (1) *Homicidal mania* (morbid propensity to kill).
- (2) *Kleptomania* (morbid propensity to steal).
- (3) *Pyromania* (morbid incendiary propensity).
- (4) *Aidoiomania* (morbid sexual propensity).
- (5) *Pseudonomania* (morbid lying propensity).
- (6) *Oikeiomania* (morbid state of domestic affections).
- (7) *Suicidal mania* (morbid propensity to self-destruction).
- (8) *Fanatico-mania* (morbid state of the religious feelings).
- (9) *Politico-mania* (morbid state of political feeling).

those suffering from hallucinations or systematic madness, who astonish and frighten us by the inexorable logic of their actions, who express only imperfectly shaped regrets, who are indifferent as to the condition of their victims, as much as to their own interests, and who are not able to say but that they will perform the same act again if the opportunity should occur. In scrutinizing the former life of such patients we must remain convinced that the lesions of their intelligence, the disorganization of their instincts and tendencies must be due to deep organic disturbances. Hereditary influences, malformation of the great organ of the intelligence, certain diseases which may have changed the general health, idiopathic affections, arrests of development; troubles at the period of puberty, or in the normal phenomena of gestation, are so many involuntary causes. These causes are the more striking and palpable as the patients cannot always be excused on account of a vicious education. The malady with which they are afflicted has sometimes attacked them in the midst of the best social conditions, and when a relatively feeble intelligence and the manifestation of depraved instincts have early been remarked in them; conditions of system which have not always found their corrective in an appropriate hygienic treatment and education. And this is why we have called this form of mania, *instinctive mania*, because we see in it something so *essentially* connected with the organic conditions, that it is impossible for us to consider such patients as other than what they really are, viz., things deprived of their free-will and reason. There do exist voluntary causes which produce identical consequences as regards the derangement of the tendencies. The subversive and selfish passions, debauchery, lewdness, drunkenness, and solitary habits, are of this class. This form of mania will be best shown in the following case, of an educated maniacal woman who was irresistibly urged on to attempt the lives of her companions and relations:—

The previous mode of living of Mariè C., by no means explains the aberration of her sentiments and the disorganization of her feelings. Born of honest parents, who spared nothing for her education, she embraced, early in life, the profession of teacher in a small village. She quitted this position, which was too laborious for her, and entered as domestic into a family, where she was treated rather as one of the household than as a servant. She remained there eight years, as happy as it was possible for one so afflicted to be.

"I do not know," she says, "how to explain my mode of life. I never amused myself like the other children of the village; I possessed a ridiculous, fantastical, capricious temper, and I generally preferred seeing evil done than good. I was sometimes extravagantly gay but more generally I was sad."

*Question*.—"Had you any cause for being so?" *Answer*.—"None. My parents loved me, if possible, more than my other brothers and sisters; but I really took pleasure in nothing. I have been a teacher, but that became very wearisome to me. I have been for eight years in the household of M. P., but it was always the same thing; however I never said any thing, I kept every thing to myself." *Q*.—"Have you ever thought of marrying?" *A*.—"Never; and when any one made such proposals to me, I thought that they wished to insult me." *Q*.—"Have you suffered from violent grief?" *A*.—"I cannot truly say that I have suffered more pain than pleasure, it was only when my brother was accidentally drowned that I experienced a great blow; but, what is singular, I was not grieved at the idea of having lost him but at the thought of his dying unconfessed." *Q*.—"Have you ever been dangerously sick?" *A*.—"Six months after the death of my brother, I was attacked with a severe illness (typhoid fever). Since that time I have been very restless; I get up during the night; I cannot sleep. The blood rushes to my head, and the desire of doing evil then takes possession of me." *Q*.—"Explain clearly all that you have done up to this period?" *A*.—"I used to arise at night and go torment my sister; I used to awake her and draw her to the foot of her bed.

§ 186. (1.) *Homicidal monomania* (a) is not to be confounded, according to Marc, with the sudden murderous impulse with which madmen are occasionally seized under the influence of revenge, or of some other passion which controls them; and it is, in like manner, important to distinguish it from delirium. Esquirol understands the term to mean a partial insanity, distinguished by more or less violent cravings of a murderous nature; and subdivides it into—

(a.) Cases in which the murder is caused by a firm but insane conviction—the monomaniac being carried away by an avowed but irrational motive, and always manifesting conclusive signs of a partial insanity of the understanding or the feelings.

(b.) Cases in which the monomaniac displays no perceptible disturbance of the understanding or the feelings, but is carried away by a blind instinct, by an *inexplicable something*, which impels him to the commission of murder. As, however, is very pertinently remarked by Schürmayer: the distinctions and definitions of Marc and Esquirol do

Once I bit her very badly in the hand." Q.—"On these occasions were you conscious of any pain, had you no longer any appetite?" A.—"I suffered pain nowhere, except that my courses had stopped, and the physicians bled and put leeches on me to rectify that; but the more I was bled the more wicked I became, *I only thought of evil, and I only wished for evil*; so much so, that I once told my sister to bring me an axe, to cut some wood with, and when she brought it I tried to split her head. I ran after her, and if our parents had not interfered, I should certainly have killed her. As to appetite, I have always had too good a one; I eat like an animal. I was in the habit of taking pieces of bread and carrots from the troughs in our cow-stable. I am never able to satisfy myself." Q.—"If you had killed your sister, would you have been much grieved?" A.—"I think not; it would not have worried me at all. In the same manner, when I was at the hospital of Remiremont, I was always trying to kill somebody. Once I grasped a woman so hard by the throat, that I should have strangled her if she had not cried out, and put out her tongue so far as to frighten me. I did nothing but dream of shedding blood; I could have drank it. Once I enticed six old women into the dormitory, wishing to strangle them; I commenced with one, but the others crying out obtained assistance. I was confined alone, and as I could injure no one, I commenced biting my own hands (the signs of the cicatrices are still visible)." Q.—"Do you hear voices commanding you to do these frightful acts. Explain how it is possible for a girl well brought up to behave in such a manner?" A.—"I hear no voices, but I am pushed on to such a degree as to be unable to stop myself from performing them. When I am at church, instead of saying prayers, I blaspheme. They tried to place rosaries and images of the Holy Virgin in my hands, but I destroyed them. I always am desirous of overturning whatever is on the altar, and when I see any girl by my side saying her prayers, I worry and pinch her."

With regard to the two months that Mariè C. has been at the Asylum, she did not exaggerate the bad instincts that control her. She has become the terror of her ward. We have been obliged to isolate her because she arises during the night, drags the other patients out of bed, and tries to strangle them. She however works and occupies herself; but suffer her to escape out of sight for a moment, and she leaves her work in order to tear up that of her companions. Approaching them with a sympathizing manner, and under pretence of seeing what they are doing, she twists their hands in her attempts to break their fingers.

If the strait-waistcoat is put upon her, she finds means of placing herself in the way of every body, and tries to trip up her companions and to bite, all the while deploring her situation and wishing to be delivered from it. But even in expressing her regrets, her face betrays no emotion, she remains impassible and it is difficult to read upon her features any expression of the perverted sentiments which force this unfortunate to the performance of such deplorable acts, &c.—See *Traité Théorique des Maladiè Mentales*, par M. Morel. Tome I. p. 310. Paris, 1852.

(a) Siebold's *Gericht. Med.* § 219; Hoffbauer's *Psychologie*, § 122; Conradi's *Commentatio der mania sine delirio*, Gott. 1827, 4; Conradi's *Beitrag zur Geschichte der Manie sine delirio*, Gott. 1835; Artikel *Mania sine delirio*, in Jesse's *Encyclop. Wörterb. der Med. Wissench.* Bd. 22. Berlin, 1840, p. 410.

not advance us in the field of forensic psychology a single step beyond what we had already reached by means of the physiology of insanity in general; while their assumed homicidal monomania falls, on the one hand, into the well known rank of mania, and is easily recognized and considered as one of its accidental manifestations, or, on the other hand, draws into the circle of its definition *every* murder of which the author is in a condition to assert, that he was compelled to commit it by an impulse which he found to actuate him.

§ 187. But whether we assign to homicidal mania a distinct place as a peculiar morbid impulse, or whether it is to be treated as a mere occasional and eccentric development of ordinary mania, the result is the same in practice. (b) It must be recognized—under the severest checks, it is true—as an adequate defence; and no where is this more satisfactorily stated than by the late Chief Justice GIBSON, and by the present Chief Justice LEWIS. (c)

§ 188. The inquiry arises, if juries are to acquit for homicidal mania, what provision is to be made to protect society? Is not, after all, capital punishment, or imprisonment for life, the best remedy for a class of men whose very essence it is, as declared by judicial sentence, to destroy their fellow creatures? To this, as will be more fully seen hereafter, the answer is, that as the law stands now, with homicidal mania recognized by verdicts of juries rather than the public policy of the land, the consequences are certainly very mischievous. But this arises from the very reluctance of legislatures, and of those recently engaged in codifying the criminal code, to provide against a doctrine which, after all, whenever the case arrives, will be sustained on trial. Two eminent French authorities, Brierre de Boismont and Aubanel, have proposed the proper remedy, which, in fact, has been partially adopted by several of our legislatures, *e.g.*, Massachusetts and Pennsylvania. When the defendant is to be acquitted on this ground, let the jury certify this fact, and the defendant be remanded into confinement. But let that confinement be neither with the insane nor the criminal, but in distinct apartments adapted for the purpose of confining this entire class of monomaniacs or insane convicts. (cc)

§ 189. Dr. Ray, among all Anglo-American authorities, gives this species of mania the widest sweep. "It was first distinctly described by Pinel," he says, "and though its existence as a distinct form of monomania was for a long time after doubted, it has subsequently been admitted by the principal writers on insanity—by Gall and Spurzheim, Esquirol, Georget, Marc, Andral, Orfila, and Broussais, in France; by Connelly, Combe, and Prichard, in England; by Hoffbauer, Platner,

(b) See the remarks, on this point, of Dr. Forbes Winslow (*Journ. Psych. Med.* vol. iii. p. 290).

(c) See *ante*, § 53, 54, 55. See an interesting treatise by Dr. Woodward, 1 *Am. Jour. of Ins.* 322. See also *People v. Kleim*, reported 2 *Am. Journ. of Insan.* 245; *Abner Baker's case Reviewed*, 3 *Ibid.* 26; *Trial of Rabello*, reported, *Ibid.* 41; an *Essay*, by Dr. Aubanel, on the same point, *Ibid.* 107; *Report of Trial of People v. Griffin*, *Ibid.* 227; *People v. Sprague*, 6 *Ibid.* 254; *Com. v. Furbush*, 9 *Ibid.* 151. For an interesting though desultory sketch of the law, see Mr. Warren's *Remarks on Oxford's and McNaughten's cases*, 7 *Am. Journ. of Ins.* 318; *Black. Mag.* for Nov. 50.

(cc) See *post*, § 259, 276.

Ettmuller, Henke, and Friedreich, in Germany; by Otto, of Copenhagen; and by Rush, in this country. It has received the various appellations of *monomanie homicide*, *monomanie meurtrière*, *melancholie homicide*, *homicidal insanity*, *instinctive monomania*. Esquirol, in his valuable memoir, first published in the shape of a note in the French translation of Hoffbauer's work, observes, that homicidal insanity, or *monomanie homicide*, as he terms it, presents two distinct forms, in one of which the monomaniac is always influenced by avowed motives more or less irrational, and is generally regarded as mad; in the other, there are no motives acknowledged, nor to be discerned, the individual being impelled by a blind, irresistible impulse. It is with the latter only we are concerned, for the other is clearly a form of partial intellectual mania; but as this division has not been strictly made by nature, cases often occurring that do not clearly come under either category, the subject will be better elucidated by noticing all the forms of this affection, and seeing how intimately they are connected together."(d)

§ 190. The same distinguished authority suggests the following tests:—

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

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

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

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

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

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

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

More simple, though scarcely less efficacious, are the indicia given by Taylor:—

1. The acts of homicide have generally been preceded by other striking *peculiarities of conduct* in the individual, often by a total change of character.

2. They have in many instances, previously or subsequently, attempted *suicide*,—they have expressed a wish to die or to be executed as criminals.

These supposed criteria have been repeatedly and very properly rejected when tendered as medical proofs of insanity in courts of law. They are of too vague a nature, and apply as much to cases of moral depravity as of actual insanity; in short, if these were admitted as *proofs*, they would serve as convenient shelter from punishment of many criminals.

3. These acts are without *motive*: they are in opposition to all human motives. A man known to have been tenderly attached to his wife and children, murders them: a fond mother destroys her infant.(f)

§ 191. It would be improper, however, to pass from this head without giving place to the very decided protest, by Dr. Mayo, against the independent recognition of the propensity at all. “I may observe,” he says, “that the theory of either moral or impulsive insanity is too liable, for anything that Dr. Pritchard has suggested, to occasion the sudden outbreaks of the brutal character—a character under rapid development, at present, in the lower orders of the country, to find refuge under this plea. Such was the application of it which, some years ago, protected the Honorable Mr. Touchet from the penal consequences of a great crime. That gentleman put to death, by a pistol-shot, the marker of a shooting-gallery. The act was sudden, and there was no apparent motive; but it was not performed under any semblance of delirium. Mr. Touchet was eccentric, and he was *blasé*. He fancied that he desired to be hanged,—at the gallows he would probably have thought differently—and he was reckless and brutal enough to give himself a chance of this fate, at the expense of the life of a fellow creature. I have noticed him since, in the criminal department of Bedlam, *insouciant* and indifferent enough, but certainly not insane in any sense of the word that would not entirely disintegrate its meaning; neither when we proceed to consider the sense which the law intends to give to the expression of the certificate—‘unsoundness’—shall we find this epithet at all more appropriate to Mr. Touchet’s case, which was simply one of brutal recklessness. With respect to the misapplication of the plea of insanity to hysteria, we have the case of a nursery-maid, placed in Bethlehem Hospital in 1846. A trifling disappointment, relative to an article of dress, had produced in her a wayward state of mind. She labored, at the time, under diminished catamenia. An object to which she was generally much attached came in her way, namely, the infant whom she had nursed, and she destroyed it, as a faneiful child breaks, in its

(e) Ray on Insanity, pp. 229, 230.

(f) Taylor’s Med. Jur., p. 578.

moodiness, a favorite doll. No fact more nearly approaching to delirium than the above, was stated in exculpation or excuse at the trial. But Dr. Pritchard's work on the different forms of Insanity, in relation to Jurisprudence, was published in 1842; and, by 1846, juries had learned to convert the uncontrolled influences of temper into what he terms Instinctive Insanity."

"As an instance of this class of cases in which the judicial authorities came rightly to a very different conclusion, I will quote to you the following one, from Sir Woodbine Parrish's last work on Buenos Ayres. Having spoken of a certain wind occasional in that climate, which in some persons produces peculiar irritability and ill-humor almost amounting to a disorder of their moral faculties, he proceeds as follows:—"Some years ago, Juan Antonio Garcia aged between thirty-five and forty, was executed for murder at Buenos Ayres. He was a person of some education, and rather remarkable for the civility and amenity of his manners; his countenance open, his disposition generous. When this *vento-norte*—this peculiar north wind set in, he appeared to lose all command over himself; and such became his irritability, that during its continuance he was engaged in continual quarrels and acts of violence. Before his execution, he admitted that it was the third man he had killed, besides being engaged in various fights with knives. When he arose from his bed in the morning, he told Sir Woodbine's informant, he was always aware at once of its accursed influence upon him; a dull headache first, and then a feeling of impatience at everything about him. If he went abroad his headache generally became worse; a heavy weight seemed to hang over his temples. He saw objects as it were, through a cloud, and was hardly conscious where he went. He was fond of play, and if, in such a mood, a gambling house was in his way, he seldom resisted the temptation. Once there, a turn of ill luck would so irritate him, that he would probably insult some one of the bystanders; if he met with any one disposed to resent his abuse they seldom parted without bloodshed. The relations of Garcia corroborated this account, and added that no sooner had the cause of excitement passed away, than he would deplore and endeavor to repair the effects of his infirmity. 'The medical man,' says Sir Woodbine, 'who gave me this account, attended him in his last moments and expressed great anxiety to save his life, under the impression that he was hardly to be accounted a reasonable being.' 'But,' he adds, 'to have admitted that plea, would have led to the necessity of confining half the population of the city when the wind sets in.' I quite agree with the conclusion which this remark implies, as to the fate of Garcia. He was himself aware of the murderous instinct to which he was liable, and of its exciting causes. Surely when such knowledge is in the possession of the delinquent, he must be made responsible for the non-avoidance of exciting causes." (g)

The subject of homicidal mania as developed in the puerperal state will be considered in a subsequent section. (gg)

(g) Mayo on Medical Testimony in Lunacy, 58, 59, 60, 61, 62.

(gg) See *post*, § 239, *ante*, § 53, 57.

(2.) *Kleptomania*.(h)—(Morbid propensity to steal.)

§ 192. *Kleptomania*, occurs not unfrequently as a symptom in mania, and the mental confusion incidental to it, and in depression and delirium, in which its consideration will involve less difficulty. But where it occurs in cases of concealed insanity, its discovery is not easy. Ellinger (*i*) gives the following practical directions:

1. In the earlier developments of mania, kleptomania is an important symptom; it will however be found accompanied, more or less, by other symptoms of incipient derangement, such as a general alteration in the accustomed mode of feeling, thinking, occupation and life of the individual, a disposition to scold, dispute and quarrel, to drink and to wander about busily doing nothing, and the bodily signs of excitement (restlessness, want of sleep, rapid pulse, &c.)

2. Kleptomania continues after the disease, to all external appearance has ceased. Here the disease also has not yet terminated, which can only be indicated by a return of the original state of thought and feeling. (This calls for a continued course of observation by the examining physician.)

3. There are distinct but occult hallucinations at work. These are to be assumed the more readily, the more bizarre and exclusive is the desire to steal, and the more the objects to which it is confined, are out of proportion to the property of the thief; and particular attention should be paid to the existence, present or past, of other symptoms of insanity.

4. Automatic impulses, such as the cravings of pregnant women, actuate the perpetrators, which become the more probable, the more strongly reason revolts at and abhors the deed, the more inconsiderable and grotesque the peculations, the more promptly the stolen articles are returned, and the more other morbid symptoms are apparent in the body and the mind when the deed is committed.

“There are persons,” says Dr. Rush, “who are moral to the highest degree as to certain duties, but who, nevertheless, live under the influence of some one vice. In one instance, a woman was exemplary in her obedience to every command of the moral law, except one,—she could not refrain from stealing. What made this vice more remarkable was, that she was in easy circumstances, and not addicted to extravagance in anything. Such was the propensity to this vice, that when she could lay her hands on nothing more valuable, she would often at the table of a friend, fill her pockets secretly with bread. She both confessed and lamented her crime.” “Cases like this,” says Dr. Ray, “are so common, that they must have come within the personal knowledge of every reader who has seen much of the world, so that it will be unnecessary to mention them more particularly. It would be difficult to prove directly, that this propensity, continuing as it does throughout a whole life, and in a state of apparently perfect health, is, notwithstanding, a consequence of diseased or abnormal action in

(h) See Méd. Lég. M. Orfila. Tome I. p. 364. Paris, 1848.—Etudes Cliniques des Maladies Mentales. M. Morel. Tome I. p. 319. Paris, 1854.—See *ante*, § 106, as to hereditary tendency to steal.

(i) I. a. W. P. 159.



the brain, but the presumptive evidence in favor of this explanation is certainly strong. First, it is very often observed in abnormal conformations of the head, and accompanied by an imbecile condition of the understanding. Gall and Spurzheim saw in the prison of Berne, a boy twelve years old, who could never refrain from stealing. He is described as 'ill-organized and rickety.' At Hainau they were shown an obstinate robber, whom no corporeal punishment could correct. He appeared about sixteen years of age, though he was in fact twenty-six; his head was round, and about the size of a child's one year old. He was also deaf and dumb, a common accompaniment of mental imbecility. An instructive case has been lately recorded, in which this propensity seemed to be the result of a rickety and scrofulous constitution. Secondly, this propensity to steal is not unfrequently observed in undoubted mania. Pinel says it is a matter of common observation, that some maniacs, who, in their lucid intervals, are justly considered models of probity, cannot refrain from stealing and cheating during the paroxysm. Gall mentions the case of two citizens of Vienna, who, on becoming insane, were distinguished in the hospital for an extraordinary propensity to steal, though previously they had lived irreproachable lives. They wandered over the house from morning to night, picking up whatever they could lay their hands upon,—straw, rags, clothes, wood, etc., which they carefully concealed in their room."(*j*)

§ 193. The individuality of Kleptomania, (*Stehltrieb*), is demonstrated by the remarkable degree to which it prevails among epileptics of all classes and conditions. Dr. Erhardt(*k*) enumerates many cases where these unhappy sufferers have been possessed with irrepressible desires to appropriate to themselves whatever they could secretly lay their hands on, valuable or not. And generally with regard to the moral responsibility of epileptics, it is important to observe, says the same judicious author, that even after attacks have been for months suspended, the mind is in a condition of disorganization which should properly divert from it the application of those severe rules which apply to minds perfectly sound.(*l*)

§ 194. Gall, says Dr. Ray, met with four examples of women who, when pregnant, were violently impelled to steal, though perfectly upright at other times. Friedreich gives the case of a pregnant woman who, otherwise perfectly honest and respectable, suddenly conceived a violent longing for some apples from a particular orchard, two or three miles distant. Notwithstanding the entreaties of her parents and husband not to risk her character and health, and their promises to procure the apples for her in the morning, she started off in company with her husband, at nine o'clock of a cold September night, and was detected by the owner in the act of stealing apples. She was tried and convicted of theft, but subsequently a medical commission was appointed by the Supreme Court to examine and report upon her case. Their

(*j*) Ray on insanity, 189, 190, 191; see *ante*, § 106.

(*k*) Ueber Zurechnungsfähigkeit der Epileptischen.

(*l*) See also Boileau de Castlenau De l'épilepsie dans ses rapports avec l'aliénation mentale, considérés au point de vue médico-judiciaire. Annales d'Hygiène publ. et de Médecine Lég. Avril, 1852, No. 94.

inquiries resulted in the opinion that she was not morally free, and consequently not legally responsible while under the influence of those desires peculiar to pregnancy; adding, that if Eve had been in the condition of the accused when she plucked the forbidden fruit from the tree, the curse of original sin would never have fallen on the race.”(m)

Fodéré tells us that he has often witnessed an irresistible propensity to steal, even in persons well educated, and who, during infancy, have often been chastised for this vice. They had conceived, in consequence, the greatest horror for it, yet, in riper age, could not prevent themselves, when opportunity occurred, of indulging it.(n) “I had a female servant,” he adds, “who was a very good Christian, very wise and very modest, but who could not prevent herself from stealing in secret from myself and others, even the most trifling things, though aware of the turpitude of the action. I sent her to the hospital as mad; after a long time, appearing to be reclaimed, she was restored to her place among the other servants; by little and little, in spite of herself, the instinct returned; and being distracted on the one hand by the evil propensity, and on the other by the horror which she felt of it, she fell into an access of mania, and suddenly died in the violence of a paroxysm.”

“The propensity to steal in magpies, and other domesticated birds,” says Dr. Millingen,(o) “is daily observed, and we have numerous examples to prove that acquired instincts become hereditary in many animals. This fact is illustrated in various races of dogs. Roulin relates that the dogs employed for hunting deer in some parts of Mexico, seize the animal by the belly, and overturn it by a sudden effort, taking advantage of the moment when the body of the deer rests only upon the fore legs: the weight of the animal thus thrown over being often six times that of its antagonist. The dog of pure breed inherits this disposition, and never attacks the deer from before while running; even should the deer, not perceiving him, come directly upon him, the dog slips aside and makes his assault on the flank; when as other hunting dogs, though of superior strength and general sagacity, which are brought from Europe, are destitute of this instinct.”(p)

Very recently, (April 1855,) a trial, involving the defence of Kleptomania, has been the cause of much discussion by the London press. Mrs. R., the wife of a physician of rank and affluence, was detected in secreting some French cambric handkerchiefs in the shop of a respectable haberdasher. The jury were unable to agree, and the *Times*, in discussing the case, made the following statement:

“It is an instance of that not very uncommon monomania, which leads persons, otherwise estimable and well conducted, to pilfer articles of a trifling value, in obedience to the impulses of a diseased imagination. The fact is notorious, that many persons of high rank and ample means have been affected with this strange disorder. Every one

(m) Ray on Insanity, pp. 192-3.

(n) For other cases, vide Münchmeyer in Henke's Zeitschrift, Vol. XLIX. p. 350; Dict. des Sciences Médicales, Tome XIV. Art. Femme, p. 624, and Art. *Grossesse*; Prager, Vierteljahrsschrift, V. 30. Bd. 2, p. 121.

(o) Mind and Matter, p. 22, 23.

(p) Roulin, Annales des Sciences Naturelles, Tome XVI. p. 16, 1829; see as to hereditary Kleptomania, § 106.

who is acquainted with London society could at once furnish a dozen names of ladies who have been notorious for abstracting articles of trifling value from the shops where they habitually dealt. Their *modus operandi* was so well known, that on their return from their drives, their relatives took care to ascertain the nature of their paltry speculations, inquired from the coachman the houses at which he had been ordered to stop; and, as a matter of course, reimbursed the tradesmen to the full value of the pilfered goods. In other cases, a hint was given to the various shopkeepers at whose houses those monomaniacs made their purchases, and they were simply forewarned to notice what was taken away, and to furnish the bill, which was paid as soon as furnished—and, as a matter of course, by the pilferer herself, without any feeling of shame or emotion of any kind.”

(3.) *Pyromania*, (Morbid incendiary propensity.)

§ 195. An independent symptom of this kind may have as little substantive existence as homicidal monomania, but it will remain, nevertheless, observable as a symptom of the disease in cases of insanity. In investigating such cases, the following points should be kept in view:

(a.) In persons *who have passed the age of puberty*, whether there is not depression or partial insanity at bottom, whether the individual was not overcome and impelled to the deed by a nameless dread which he could not dispel, or by some crazy notion before concealed.

(b.) In persons *just arrived at the age of puberty*. Here the state of development in general, and in particular that of the mind, of the whole body, and of the sexual organs, must be accurately weighed and estimated, with special reference to age and sex, education and mode of life, as experience teaches that the irregularities of every kind which here occur, (such as accelerated and impeded growth, unusual prostration and fatigue of the limbs, with painful sensations not produced by adequate visible causes, swellings of the glands, anomalies in menstruation, cramps and other nervous attacks, and particularly irritations of mind,) exert the most important influence on the growth and increase of certain desires and inclinations, and easily impair the power of self-control. These transition states acquire a particular significance when accompanied by home-sickness, which, without necessarily attaining the height of complete melancholy, and when only beyond the ordinary degree of development, is sufficient to mislead the poor tortured, half-grown child to the last extremes of action,—not to arson alone, but to murder,—particularly the poisoning of children.

(c.) *Where the individual is yet in infancy*. Here, in the absence of reason, reflection, and religious and moral culture, a childish curiosity generally furnishes the motive, more rarely, a grudge, anger, or revenge; but physical and mental or moral causes may also be at work independently or as auxiliaries.(q) Tender years are sufficient, in such cases, to exclude the idea of criminal responsibility.(r)

(q) Ellinger, *Ib.* 158.

(r) Compare on the subject of Pyromania, Casper, *Denkwuerdigkeiten der medizinischen Statistik und Staatsarzneikunde*. Berlin, 1846, p. 251.

§ 196. "A morbid propensity to incendiarism, or *pyromania*, as it has been termed, where the person, though otherwise rational," says Ray, "is borne on by an irresistible power to the commission of this crime, has received the attention of medical jurists in Europe, by most of whom it has been regarded as a distinct form of insanity, annulling responsibility for the acts to which it leads. Numerous cases have been related, and their medico-legal relations amply discussed by Platner, Vogel, Masius, Henke, Gall, Mare, Friedreich, and others. In a few of these cases the morbid propensity is excited by the ordinary causes of insanity; in a larger class it is excited by that constitutional disturbance which often accompanies the menstrual periods; but in the larger class of all, it occurs at the age of puberty, and seems to be connected with retarded evolution of the sexual organs. The case of Maria Franc, quoted by Gall from a German journal, who was executed for house-burning, may be referred to the first class. She was a peasant of little education, and in consequence of an unhappy marriage, had abandoned herself to habits of intemperate drinking. In this state a fire occurred in which she had no share. From the moment she witnessed this fearful sight, she felt a desire to fire houses, which, whenever she had drunk a few copper's worth of spirits, was converted into an irresistible impulse. She could give no other reason nor show any other motive for firing so many houses, than this impulse which drove her to it. Notwithstanding the fear, the terror, and the repentance she felt in every instance, she went and did it afresh. In other respects her mind was sound. Within five years she fired twelve houses, and was arrested on the thirteenth attempt."(s)

The extent to which this mischievous propensity exists can only be determined by a very careful examination of local statistics.

"There is another class of incendiary fires," says a late number of the London Quarterly Review, "which arise from a species of monomania in boys and girls. Not many years ago the men of the Fire Brigade were occupied for hours in putting out no less than half a dozen fires which broke out, one after another, in a house in West Smithfield: and it was at last discovered that they were occasioned by a youth who went about with lucifer matches, and slyly ignited every thing that would burn. He was caught in the act of firing a curtain in the very room in which a fireman was occupied in putting out a blaze. A still more extraordinary case took place in the year 1848, at Torluck House, in the Isle of Mull. On Sunday, the 11th of November, the curtains of a bed were ignited, as it was supposed, by lightning; a window-blind followed; and immediately afterwards the curtains of five rooms broke out, one after another, into a flame; even the towels hanging up in the kitchen were burnt. The next day a bed took fire, and it being thought advisable to carry the bed-linen into the coach-house for safety, it caught fire three or four times during the process of removal. In a few days the phenomenon was renewed. The furniture, books, and every thing else of an inflammable nature were, with much labor, taken from the mansion, and again some body-linen burst into a flame on the way. Even after these precautions had been taken, and persons had

(s) Ray on Insanity, pp. 197, 198.

been set to watch in every part of the house, the mysterious fires continued to haunt it until the 22d of February, 1849. It was suspected from the first that they were the act of an incendiary, and upon a rigid examination of the household before the Fiscal General and the Sheriff, the mischief was traced to the daughter of the housekeeper, a young girl on a visit to her mother. She had effected her purpose, which was perfectly motiveless, by concealing combustibles in different parts of the house.”(t)

§ 197. “This plea,” we are told by Taylor, “has been already admitted in English Law,(u) but chiefly in those instances in which there was strong reason to suspect intellectual aberration. In one recent case,(v) the prisoner was convicted on the principle that although of weak intellect, she knew right from wrong.(w) Among several important trials in which this plea has been urged in defence, the one most interesting to the medical jurist is that of *James Gibson*, tried before the High Court of Justiciary, Edinburgh,(x) of which a very full report will be found in Cormack’s *Edinburgh Journal*, February, 1845, p. 141. The prisoner was charged with setting fire to certain premises, and the defence chiefly rested upon the allegation that he was in a state of mind which rendered him irresponsible for the act. The medical evidence was generally in favor of the insanity. The Lord Justice Clerk, (Hope,) in a very elaborate charge to the jury, laid down for their guidance most of the legal propositions which have been already discussed under homicidal mania. He remarked that they were “not to consider insanity according to the definitions of medical men, especially such fantastic and showy definitions as are found in Ray, whose work was quoted by the counsel for the panel, and in many other medical works on the subject. He adopted Mr. Alison’s view that the consciousness of right and wrong must be applied to the *particular act*, and not to crime in the abstract. The duty of deciding on this question is with the jury; it is not to be delegated to medical men, and by relying upon their own judgment, their decisions would be nearer the truth than that of any body of medical witnesses.” The jury negatived the plea, and the prisoner was sentenced to transportation for fourteen years.”(y)

An extraordinary instance of pyromania may be found in the case of *Jonathan Martin*, who fancied himself to be deputed from God to burn down the Cathedral of York, in order to do away with the heresies which he supposed to exist in the church.(z)

§ 198. The following considerations, laid down by Hencke, and adopted by Marc, are recommended to us by the additional authority of Dr. Ray :

1. To prove the existence of pyromania, produced by the sexual evolution, the age should correspond with that of puberty, which is between twelve and fifteen. Sometimes, however, it may occur, especially in females, as early as the seventh or tenth year, and, therefore, if the

(t) London Quarterly Review, January, 1855, p. 11.

(u) See cases Med. Gaz. XII. p. 80.

(v) Reg. v. White, Wilts Summer Ass. 1846.

(w) See Ann d’Hyg. 1833, II. 357; 1834, II. 94.

(y) Taylor’s Med. Jur. 595.

(z) Dec. 23, 1844.

(z) Ibid. p. 595.

symptoms are well marked, we have a right to attribute them to this cause.

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

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

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

5. For the same reason symptoms of disturbance in the nervous system, such as trembling, involuntary motion of the muscles, spasms and convulsions of every kind, even to epilepsy, are no less worthy of attention.

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

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

(a) Ray on Insanity, pp. 201-203.

The theory that pyromania (Brandstiftungstrieb) is often a concomitant of the first development of puberty, has led to a series of very interesting disquisitions by Landsberg.(b)

(4.) *Aidoiomania*(c) (Morbid Sexual Propensity.)

§ 199. Marc gives the name of aidoiomania to the excess of the sexual impulse, which is called *satyriasis* when it occurs in the male, and *nymphomania*, or *uteromania*, in the female. This abnormal propensity occurs as a symptom of mania, lunacy, and depression, as well as of imbecility with maniacal excitements, but is also found coupled with freedom of reason and of self-control; in which case, of course, the responsibility of the agent is not suspended. How far the court, in admeasuring the punishment, is to allow for the circumstance that the individual was carried away in an extraordinary manner by the physical impulse and the external incitement, is a matter which will be considered in future sections.(d)

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

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

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

(b) Ueber die Feuerschausucht, Hermann Vezin, (Aerztliches Obergutachten über den Gemüthszustand der sich wegen Brandstiftung in Untersuchung befindenen); Höfling, (Die Lehre vom krankhaften Brandstiftungstrieb); and Meding, (Ein Nachtrag zu dem Gespenst des Brandstiftungstriebes). See an interesting case of pyromania in State v. Greenwood, reported in 5 Am. Journ. of Insan. 237.

(c) Siebold's Gericht. Med. § 210. An interesting case of Uterine Furor will be found in El. v. Siebold's Journ. Vol. VI. p. 943. See also a case in Henke's Zeitschr. 41, p. 393. A very able essay on Nymphomania will be found in Dict. des Sciences. Méd. von Louyer. Villermay. Tome XXXVI. p. 561.

(d) Post, § 259—276. On the subject of monomania and its species, compare Friedreich, "*Handbuch der gerichtlichen Psychologie*," where the literature bearing on the subject is to be found at large.

it, and fix it on the important and even urgent concerns of his business. His whole being was absorbed in sensuality. He obtained relief by an assiduous pursuit of scientific objects, and by finding out new occupations.”(e)

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

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

Under this head may be considered those cases of morbid erotic impulses which spend themselves on unnatural objects. The more common of these are those which the domestic history of classic antiquity makes familiar to us, and which St. Paul adverts to so forcibly in the first chapter of the Epistle to the Romans. To what extent these unnatural passions were carried is illustrated by the paintings in at least one of the exhumed chambers of Pompeii. And recent trials have shown, that if the same morbid developments are less numerous at the present day, they are at least equally eccentric.

Some years since the town of Leipsic was startled by the fact that a number of young girls had been assaulted in the streets, by a man wrapped in a cloak, who struck a lancet in their arms, just above the elbow, and then vanished. It was a long time before the perpetrator was discovered. When he was at last detected and put on trial, it turned out that he had been impelled to these outrages by a morbid sexual impulse,—that the incision of the lancet had been accompanied with seminal emission,—and that his whole existence had become absorbed in the alternate excitement and depression which preceded and succeeded the act.(g)

The same state of facts was developed in the trial in London of a man named Williams, for a similar species of assault.(h)

Still more startling were the exposures attending the trial of a sergeant in the French army, in 1848. For some time previous, dead bodies had been exhumed and had been torn to pieces at or near the graves. On closer inspection the horrible fact was disclosed that sexual connection had been attempted with the female corpses. The guilty party turned out to have been a young man scarcely twenty-five, of prepossessing manner and appearance, and otherwise respectable character. The psychological features were the same as in the

(e) Ray on Insanity, p. 195.

(g) Wharton's Cr. Law, (3d ed.) 383.

(h) Lawyer's Magazine. London, 1792. Vol. II. p. 351.

(f) Ray on Insanity, pp. 196, 197.



preceding cases. The act was preceded by uncontrollable excitement, and followed by great exhaustion.(i)

Foderé tells us, that a young monk, who, in travelling, happened to lodge in a house where a young girl, who was thought dead, had just been laid out, and offered to pass the night in the chamber where the coffin was and to watch the dead. During the night having uncovered it for the purpose of examination, and still finding in her countenance some traces of beauty, he determined to satisfy his lust, although the object was not in a condition for exciting desire. Nevertheless he satisfied himself, and departed early in the morning. The dead person came to life, however, the next day, and nine months afterwards had a child, to the great astonishment of herself and parents. The monk about this time arrived in the same place, and avowed himself the parent of the child, and married the mother after throwing off the vows, which he proved he had been forced to pronounce.

The following fact, taken from Brière de Boismont, shows a more permanent perversion and reveals a settled pathologic condition: A man was arrested in a small town for a crime which no one believed, but which, however, was proved at the trial. A young girl, 16 years old, belonging to one of the first families of the town, had just died. A part of the night had passed, when the noise of a piece of furniture falling, in the room where the dead person lay, was heard. The mother, whose chamber was next to it, immediately ran there, and in entering saw a man escaping in his shirt from the bed of her daughter. Her fright caused her to utter loud cries which brought around her all the persons of the household. They seized the intruder, who appeared almost insensible to every thing passing around him, and who answered but confusedly to the questions addressed him. The first idea was that it was a robber; but his dress and certain signs directed suspicion in another direction, and it was soon perceived that the young girl had been deflowered and polluted several times. It was proved that the guard had been bribed, and soon other revelations showed that this was not the first time the patient, who had received a good education, was in easy circumstances, and belonged to a good family, had performed the act. The trial proved, that he had frequently before gained access to the bed of young dead women, and there given himself up to his detestable passion.(j)

#### (5.) *Pseudomania* (Morbid Lying Propensity.)

§ 202. "There are many instances of persons of sound understandings, and some of uncommon talents," says Dr. Rush, "who are affected with this lying disease in the will. It differs from exculpativè, fraudulent, and malicious lying, in being influenced by none of the motives of any of them. Persons thus diseased cannot speak the truth upon any subject, nor tell the same story twice in the same way, nor describe any thing as it has happened to other people. Their falsehoods

(i) Journal of Psychological Med. Vol. II. p. 577.

(j) See Renaudin sur les Maladies Mentales, p. 764. Paris, 1854.

are seldom calculated to injure any body but themselves, being for the most part of a hyperbolical or boasting nature; but now and then they are of a mischievous nature, and injurious to the characters and property of others. That it is a corporal disease I infer from its sometimes appearing in mad people who are remarkable for veracity in the healthy states of their minds, several instances of which I have known in the Pennsylvania Hospital. Persons affected with this disease are often amiable in their tempers and manners, and sometimes benevolent and charitable in their dispositions. Lying as a vice is said to be incurable. The same thing may be said of it as a disease, when it appears in adult life. It is generally the result of defective education. It is voluntary in childhood, and becomes involuntary, like certain muscular actions, from habit. Its only remedy is bodily pain, inflicted by the rod, or confinement, or abstinence from food; for children are incapable of being permanently influenced by appeals to reason, natural affection, gratitude, or even a sense of shame.”(k)

§ 203. “An inordinate propensity to lying,” Dr. Ray tells us, “is also of no common occurrence in society; and most of the readers of this work have probably met with instances of it in people whose morals in other respects were irreproachable, and whose education had not been neglected. The maxim of Jeremy Bentham, that it is easier for men to speak the truth, and therefore they are more inclined to do so than to utter falsehood, seems, in them, to be completely reversed, for they find nothing more difficult than to tell the truth. In repeating a story which they have heard from others, they are sure to embellish it with exaggerations and additions, till it can scarcely be recognized, and are never known to tell the same story twice alike. Not even is the slightest groundwork of truth necessary, in order to call forth the inventions of perverted minds; for they as often flow spontaneously, in the greatest profusion, as when based on some little foundation in fact. This propensity seems to result from an inability to tell the truth, rather than from any other cause; as it can be traced to no adequate motive, and is often indulged when truth would serve the interests of the individual better. Like that last mentioned, it is liable to degenerate into unequivocal mania, of which it is sometimes a preliminary symptom, and is also quite a common feature in this disease—a circumstance which Rush considers as proof of its physical origin.”(l)

(6.) *Oikeiomania* (morbid state of domestic affections.)

§ 204. Of this, in its general shape, Prichard thus speaks:—“There are many individuals living at large, and not entirely separated from society, who are affected in a certain degree by this modification of insanity. They are reputed persons of singular, wayward, and eccentric character. An attentive observer may often recognize something which leads him to entertain doubts of their entire sanity; and circumstances are sometimes discovered, on inquiry, which assist in determining his opinion. In many instances it is found that there is an hereditary tendency to madness in the family, or that several rela-

(k) Rush on the Mind, pp. 262–264.

(l) Ray on Insanity, p. 193.

tives of the person affected have labored under disease of the brain. The individual himself is discovered, in a former period of life, to have sustained an attack of madness of a decided character. His temper and disposition are found, on inquiry, to have undergone a change,—to be not what they were previously to a certain time: he has become an altered man; and this difference has perhaps been noted from the period when he sustained some reverse of fortune, which deeply affected him, or since the loss of some beloved relative. In other instances, the alteration in his character has ensued immediately on some severe shock which his bodily constitution has undergone. This has either been a disorder affecting the head, a slight attack of paralysis, a fit of epilepsy, or some fever or inflammatory disorder, which has produced a perceptible change in the habitual state of the constitution. In some cases the alteration in temper and habits has been gradual and imperceptible, and it seems only to have consisted in an exaltation or increase of peculiarities which were always more or less natural and habitual.”(m)

Very often this domestic perversity is associated with the most complacent benignity out of doors. Zimmerman, whilst he was inculcating and professing the most serene benevolence, was, by his tyranny, driving his son into madness, and making his daughter an outcast from home. Goethe—no inapt observer of human nature—says, “Zimmerman’s harshness towards his children was the effect of hypochondria,—a sort of madness or moral assassination, to which he himself fell a victim after sacrificing his offspring.”(n)

(m) Cited, Ray on Insanity, pp. 168–9.

See Feuchtersleben’s Views on this point. Principles of Medical Psychology, being the outlines of a Course of Lectures by Baron von Feuchtersleben, M. D. Vienna, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by G. B. Babington, M. D., F. R. S., &c. London: printed for the Sydenham Society, 1847, p. 204.

(n) Dean Swift’s life furnishes a striking illustration of this species of derangement of the domestic affections. By the indulgence of this very morbid tendency to torture the object of his most cherished love, he first succeeded in crushing under the weight of despair a woman whom he really loved, and then, by the recoil, in subjecting himself to that most miserable of all fates, that of an insane old age. Take, as a scene in the first awful drama, the following narrative by Mr. Sheridan: “A short time before Stella died,” says he, “a scene passed between the Dean and her, an account of which I had from my father, and which I shall relate with reluctance, as it seems to bear more hard on Swift’s humanity than any other point of his conduct in life. As she found her final dissolution approaching, a few days before it happened, in the presence of Dr. Sheridan, she addressed Swift in the most earnest and pathetic terms to grant her dying request, ‘that, as the ceremony of marriage had passed between them, in order to put it out of the power of slander to be busy with her fame after death, she adjured him, by their friendship, to let her have the satisfaction of dying, at least,—though she had not lived—his acknowledged wife.’ Swift made no reply, but, turning on his heel, walked silently out of the room, nor ever saw her afterwards during the few days she lived. This behaviour threw her into unspeakable agonies, and for a time she sunk under the weight of so cruel a disappointment.”

No wonder was it that, when under the influence of the remorse which was too late awakened, his powerful sensibilities were aroused to the full consciousness of his guilt, he would beat his forehead for night after night, and stride to and fro in his deserted apartment, until at last the only change became that from delirium to melancholy, and from melancholy to delirium. Dr. Winslow gives us the following glimpses of the closing scenes:—

“The most minute account of this melancholy period, founded upon the evidence given by Mrs. Whiteaway, as well as upon the testimony of Mr. Dean Swift and others who witnessed his bad condition, is given by Dr. Delany:—

“‘In the beginning of the year 1741 his understanding was so much impaired, and his passions so greatly increased, that he was utterly incapable of conversation. Strangers

§ 205. Illustrations of this phase will be found in the following sections. At present it is sufficient to call attention to one feature, which

were not permitted to approach him, and his friends found it necessary to have guardians appointed of his person and estate. Early in the year 1742 his reason was wholly subverted, and his rage became absolute madness. The last person whom he knew was Mrs. Whiteaway, and the sight of her, when he knew her no longer, threw him into fits of rage so violent and dreadful, that she was forced to leave him; and the only act of kindness that remained in her power was to call once or twice at the Deanery to inquire after his health, and see that proper care was taken of him. Sometimes she would steal a look at him when his back was towards her, but did not venture into his sight. He would neither eat nor drink when the servants were in the room. His meat, which was served up ready cut, he would sometimes suffer to stand an hour upon the table before he would touch it; and at last he would eat it walking: for during this miserable state of mind it was his constant custom to walk ten hours a day.

“In October, 1742, after his frenzy had continued several months, his left eye swelled to the size of an egg, and the lid appeared to be so much inflamed and discolored, that the surgeon expected it would mortify; several large boils also broke out on his arms and body. The extreme pain of this tumor kept him waking near a month; and during one week it was with difficulty that five persons could prevent him from tearing out his eyes. Just before the tumor perfectly subsided and the pain left him, he knew Mrs. Whiteaway, took her by the hand, and spoke to her with his former kindness: that day and the following he knew his physician and surgeon, and all his family, and appeared to have so far recovered his understanding and temper, and the surgeon was not without hopes that he might once more enjoy society and be amused with the company of his old friends. This hope, however, was but of short duration; for a few days afterwards he sank into a state of total insensibility, slept much, and could not, without great difficulty, be prevailed on to walk across the room. In this state of hopeless imbecility he is said to have remained silent a whole year. In 1774 he spoke once or twice to his servant, after which he remained perfectly silent until the latter end of October, 1775, when he expired, in the 78th year of his age.”

Lessons enough, indeed, are taught by scenes such as these. The madman howling in anguish at one moment, and at another sinking into the lethargy of unrelievable despair,—the mute but surpassing wretchedness of those broken hearts who were to receive soon such terrible retribution in the fate of him to whom their own misery was due,—have a very solemn moral. It is precisely such a moral that in these days we need. We are accustomed to look only at the grosser results with a frown, and to tolerate, with something like complacency, that dalliance with the affections merely which may by any construction be included within the limits of mere intellectual association. *Sentimentalism* has a great deal to answer for in this respect; for it utterly reverses the teachings of nature,—treating real affections as if they were shams, and shams as if they were real. On the one hand, as Bulwer admirably illustrates it in Pelham, a China monster is treated as if it were a child; on the other, a child as if it were a China monster. Lady Pelham, in eloping from her husband and child, turns back a moment to pick up from the mantel a favorite and very ugly Chinese figure which she had forgotten; and on her way back is arrested. But, in point of fact, this power of destroying the natural affections is as impossible in many cases as it is unnatural in all. The affections will, after all, often return as tyrants, to lay havoc that domain from which they were driven as exiles. There is a mysterious influence which spirit exerts upon spirit, which, in its moral aspects, is as infinite as in its merely sentimental relations it is ephemeral and unsubstantial. What Dr. Mayo tells us in the passage quoted in the beginning of this article is, alas! a fact but now too well established. There is no insanity so permanent, so wretched, and so incurable, as that which arises from a perversion of the home affections. It is not the victim alone whose mind is destroyed. The perpetrator of the act himself, though it may be he was led into it by mere want of self-control, feels its recoil. When he sees what he has done, he sinks under the revulsion, if not into insanity, which, after all, is the mark of more conscience than the mere trifler can be supposed to possess,—if not into remorse, which darkens the rest of his days, at least into a state of chronic frivolity which leads him through a contemptible old age, in which there is not enough of the man left to make the Christian, to a certain and awful judgment.

It is true that these sombre results do not always follow. All temperaments are not equally susceptible. With many, impressions of any kind are so light that they are almost immediately effaced. Alas! however, for those the soil of whose heart is either thus superficial or thus stony; and alas! for the system that makes it so! Little prospect, indeed, is there that when the earth has thus been desolated by fire and storm—when its face has been baked and hardened—it will bring forth the fruits of the coming harvest. And

is thus admirably sketched by Dr. Mayo: "Marital unkindness is subversive of soundness of mind in the person on whom it is exercised; and exercised it is in a thousand ways in this country, without violence being had recourse to. The state of the law, as Mr. Dickens well observes, and terrifically proves, is unprotective of wives. But the mischief is not unavenged: and here the case of the husband retributively commences. Many men are living in a state of continuous and exhausting remorse, under the consciousness that this system of torture is being carried on by them. For when once the habit is formed, they can neither shake it off, nor bear their self-consciousness under it.

'Culpam pœna premit comes.'

I need not speak of their retrospects, if they should outlive the object of their tyranny."(*o*)

"A very common feature of moral mania," says Dr. Winslow, "is a deep perversion of the social affections, whereby the feelings of kindness and attachment that flow from the relations of father, husband, and child, are replaced by a perpetual inclination to tease, worry and embitter the existence of others. The ordinary scene of its manifestations is the patient's own domestic circle, the peace and happiness of which are effectually destroyed by the outbreaks of his ungovernable temper, and even by acts of brutal ferocity. Frederick William of Prussia, father of Frederick the Great, undoubtedly labored under this form of moral mania; and it furnishes a satisfactory explanation of his brutal treatment of his son, and his utter disregard for the feelings or comfort of any other member of his family. About a dozen years before his death, his health gave way under his constant debauches in drunkenness; he became hypochondriacal, and redoubled his usual religious austerities. He forbade his family to talk of any subject but religion, read them daily sermons, and compelled them to

little chance is there that in the heart that has been made thin and superficial, by this very system of treating the affections as things that do *not* exist, there will be mould enough to produce either the delicate foliage or the true fruit of refined home affections. Burns' lines, whatever he may have meant, certainly reach to this:

"I speak not of the guilt of sin,  
The danger of concealing,  
But oh! it hardens all within,  
And petrifies the feeling."

But, in point of fact, the world sometimes fails in its own work. The heart cannot in every case be sublimated into inanity or ossified into insensibility. It is to be recollected that agents which God, in his all-wise purposes, has created for the object of sustaining and keeping in healthy activity the entire social system—which he has made robust enough to supply all the relations of society, and energetic enough to supply its impulses—cannot always be volatilized in the crucible of conventionality in such a way as entirely to evaporate. *Sometimes* the elements so much misunderstood will assert their power. They may in many cases, it is true, be destroyed,—alas! for the heart when such is the case,—but there will remain instances when they will rise and gather a storm which human art cannot dispel. The perturbed spirit, if not sinking to the grave in very weariness of life—broken-hearted, as the world calls it,—will be driven to its account under the Avenger's whip, amid the battle-shouts of passions which might once have been made ANGELS, but have now become FIENDS. Such, indeed, are the sanctions by which JEHOVAH THE JUST vindicates the honor and protects the integrity of His own great purposes for the moral and social government of His people.

(*o*) Mayo on Medical Testimony in Lunacy, pp. 137, 138.

ing, punishing with the utmost severity any inattention to these exercises. The prince and his elder sister soon began to attract a proportionate share of his hostility. He obliged them to eat and drink unwholesome or nauseous articles, and even spit in their dishes, addressing them only in the language of invective, and at times endeavoring to strike them with his crutch. About this time he attempted to strangle himself, and would have accomplished his design had not the queen come to his rescue. His brutality towards the prince arrived to such a pitch, that he one morning seized him by the collar as he entered his bed-chamber, and began to beat him with a cane in the most cruel manner, till obliged to desist from pure exhaustion. On another occasion shortly after, he seized his son by the hair, and threw him on the ground, beating him till he was tired, when he dragged him to a window, apparently for the purpose of throwing him out. A servant hearing the cries of the prince, came to his assistance, and delivered him from his hands. Not satisfied with treating him in the most barbarous manner, he connived at the prince's attempts to escape from his tyranny, in order that he might procure from a court-martial a sentence of death; and this even he was anxious to anticipate by endeavoring to run him through the body with a sword. Not succeeding in procuring his death by judicial proceedings, he kept him in confinement, and turned all his thoughts towards converting him to Christianity. At this time, we first find mention of any delusion connected with his son, though it probably existed before. In his correspondence with the chaplain to whom he had entrusted the charge of converting the prince, he speaks of him as one who had committed the most heinous sins against God and the king, as having a hardened heart, and being in the fangs of Satan. Even after he became satisfied with the repentance of the prince, he showed no disposition to relax the severities of his confinement. He was kept in a miserable room, deprived of all the comforts and many of the necessaries of life, denied the use of pens, ink and paper, and allowed scarcely food enough to prevent starvation. His treatment of the princess was no less barbarous. She was also confined, and every effort used to make her situation thoroughly wretched; and though, after a few years, he relaxed his persecution of his children, the general tenor of his conduct towards his family and others, evinced little improvement in his disorder, till the day of his death."(*p*)

(7.) *Suicidal Mania*, (Morbid propensity to self-destruction.)

§ 206. "The most striking peculiarity of melancholia," says Abercrombie, "is the prevailing propensity to suicide; and there are facts connected with this subject which remarkably illustrate what may be called the philosophy of insanity. When the melancholic hallucination has fully taken possession of the mind, it becomes the sole object of attention, without the power of varying the impression, or of directing the thoughts to any facts or considerations calculated to remove or pal-

(*p*) Vide Lord Dover's Life of Frederick; Winslow's Anatomy of Suicide, pp. 233, 234, 235.

liate it. The evil seems overwhelming and irremediable; admitting neither of palliation, consolation or hope. For the process of mind calculated to diminish such an impression, or even to produce the hope of a palliation of the evil, is precisely that exercise of mind which, in this singular condition, is lost or suspended, namely, a power of changing the subject of thought, of transferring the attention to other facts and considerations, and of comparing the mental impression with these, and with the actual state of external things. Under such a conviction of overwhelming and hopeless misery, the feeling naturally rises, of life being a burden, and this is succeeded by a determination to quit it. When such an association has once been formed, it also fixes itself upon the mind, and fails to be corrected by those considerations which ought to remove it. That it is in this manner the impression arises, and not from any process analogous to the determination of a sound mind, appears, among other circumstances, from the singular manner in which it is often dissipated; namely, by the accidental production of some new impression, not calculated, in any degree, to influence the subject of thought, but simply to give a momentary direction of the mind to some other feeling. Thus a man, mentioned by Pinel, had left his house in the night, with the determined resolution of drowning himself, when he was attacked by robbers. He did his best to escape from them, and having done so, returned home, the resolution of suicide being entirely dissipated. A woman, mentioned, I believe, by Dr. Burrows, had her resolution changed in the same manner, by something falling on her head after she had gone out for a similar purpose.

§ 207. "A very singular modification occurs in some of these cases. With the earnest desire of death, there is combined an impression of the criminality of suicide; but this, instead of correcting the hallucination, only leads to another and most extraordinary mode of effecting the purpose; namely, by committing murder, and so dying by the hand of justice. Several instances are on record in which this remarkable mental process was distinctly traced and avowed; and in which there was no mixture of malice against the individuals who were murdered. On the contrary, they were generally children; and in one of the cases, the maniac distinctly avowed his resolution to commit murder, with the view of dying by a sentence of law, and at the same time, his determination that his victim should be a child, as he should thus avoid the additional guilt of sending a person out of the world in a state of unrepented sin. The mental process in such a case presents a most interesting subject of reflection. It appears to be purely a process of association, without the power of reasoning. I should suppose that there had been at a former period, during a comparatively healthy state of the mental faculties, a repeated contemplation of suicide, which had always been checked by an immediate conviction of its dreadful criminality. In this manner, a strong connection had been formed, which, when the idea of suicide afterward came into the mind during a state of insanity, led to the impression of its heinousness, not by a process of reasoning, but by simple association. The subsequent steps are the distorted reasonings of insanity, mixed with some previous impression of the safe condition of children dying in infancy. This

explanation, I think, is strongly countenanced by the consideration, that had the idea of the criminality of suicide been in any degree a process of reasoning, a corresponding conviction of the guilt of murder must have followed it. I find, however, one case which is at variance with this hypothesis. The reasoning of that unfortunate individual was, that if he committed murder and died by the hand of justice, there would be time for making his peace with the Almighty, between the crime and his execution, which would not be the case if he should die by suicide. This was a species of reasoning,—but it was purely the reasoning of insanity.”(g)

(g) Dr. Winslow, in his interesting work on Suicide gives us the following remarkable cases: “The case now about to be recorded, presents some peculiarly interesting features. An English lady, moving in the first circles of society, went in company with her friends to the opera at Paris. In the next box sat a gentleman, who appeared, from the notice he took of the lady, to be enamoured of her. The lady expressed herself annoyed at the observation which she had attracted, and moved to another part of the box. The gentleman followed the carriage home, and insisted upon addressing the lady, declaring that he had had the pleasure of meeting her elsewhere, and that one minute’s conversation would convince her of the fact, and do away with the unfavorable impression which his apparent rudeness might have made upon her mind. As his request did not appear at the moment unreasonable, she consented to see him a minute by himself. In that short space of time he made a fervent declaration of his affection; acknowledged that desperation had compelled him to have recourse to a *ruse* to obtain an interview, and that, unless she looked favorably on his pretensions, he would kill her, and then himself. The lady expressed her indignation at the deceit he had practiced, and said, with considerable firmness, that he must quit the house. He did so, retired to his home, and with a lancet opened a vein in his arm. He collected a portion of blood in a cup, and with it wrote a note to the lady, telling her that his blood was flowing fast from his body, and it should continue to flow until she consented to listen to his proposals. The lady, on receipt of the note, sent her servant to see the gentleman, and found him, as he represented, actually bleeding to death. On the entreaty of the lady, the arm was banded up and his life saved. On writing to the lady, under the impression that she would now accept his addresses, he was amazed on receiving a cool refusal, and a request that he would not trouble her with any more letters. Again driven to desperation, he resolved effectually to kill himself. He accordingly loaded a pistol, and directed his steps towards the residence of his fair amorosa, when, knocking at the door, he gained admission, and immediately blew out his brains. The intelligence was communicated to the lady, she became dreadfully excited, and a severe attack of nervous fever followed. When the acute symptoms subsided, her mind was completely deranged. Her insanity took a peculiar turn. She fancied she heard a voice commanding her to commit suicide, and yet she appeared to be possessed of sufficient reason to know that she was desirous of doing what she ought to be restrained from accomplishing. Every now and then she would exclaim, ‘Take away the pistol! I won’t hang myself! I won’t take poison!’ Under the impression that she would kill herself, she was carefully watched; but notwithstanding the vigilance which was exercised, she had sufficient cunning to conceal a knife, with which, during the temporary absence of the attendant, she stabbed herself in the abdomen, and died in a few hours. It appears that the idea that she had caused the death of another, and that she had it in her power to save his life by complying with his wishes, produced the derangement of mind under which she was laboring at the time of her death; and yet she did not manifest, and it was evident to every body that she had not, the slightest affection for the gentleman who professed so much to admire her. Possessing, naturally, a sensitive mind, it was easily excited. The peculiar circumstances connected with her mental derangement, were sufficient to account for the delusions under which she labored.” (Winslow’s Anatomy of Suicide, pp. 59, 60, 61.)

“A young lady of considerable beauty was accosted in the street by a strange gentleman. She took no notice at first of the unwarrantable liberty; but on finding that he persisted in following her, she attempted, by quickening her pace, to escape. Being extremely timid, and having naturally a nervous temperament, she was much excited. The person in the garb of a gentleman followed her for nearly a mile, and when he saw that she was home, he suddenly turned down a street, and disappeared. The young lady expressed herself extremely ill soon after she entered the house. A physician was sent for, who declared his astonishment at her severe illness, from a cause so trifling.



§ 208. As to whether the representatives of a suicide can recover against life insurers, on policies containing the usual proviso against *felo de se*, there has been great vacillation of judicial authority. The first English case in which the question was mooted, was one decided in 1843, in the C. B., and was an action brought by the Executor of the insured, upon a policy containing a proviso, that in case the assured should die by his own hands, the policy should be void. The jury found that the deceased "*voluntarily* threw himself into the water, *knowing* at the time that he should thereby destroy his life, and intending to do so; but at the time of committing the act, he was not capable of judging between right and wrong." A majority of the court (Tindal, C. J., dissenting) held that under the finding, there could be no recovery.(q)

Shortly after this, came an action on a policy which contained a proviso avoiding it if the assured should "commit suicide." The evidence was, that the deceased died from the effects of sulphuric acid, taken when he was of unsound mind. Creswell, J., at Nisi Prius, told the jury that to bring the case within the exception, it must appear that the deceased, at the time he "committed suicide," was a "responsible being," capable of doing any act voluntarily. The jury found for the plaintiff.(r) Subsequently, however, the Court of Exchequer, by a vote of four to two, ordered a new trial, on the ground that the plaintiff was not, in law, entitled to recover.(rr)

In 1853, however, on an action on a policy which was to be void if the assured should "die by his own hand," the New York Court of Appeals, held that where the pleadings exhibited the mere facts, that the deceased died from "suicide by drowning himself, and so died by his own hand," but that at the time "he was of unsound mind, and wholly unconscious of the act," the insurers were responsible.(s) It was very justly said by Willard, J., that "it must occur to every prudent man, seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases which may terminate his being. It is said the defendant did not insure the continuance of the intestate's reason. Nor did they, in terms, insure him against small-pox or scarlet fever; but had he died of either disease, no doubt

During the following night, she manifested indications of mental derangement, with a disposition to commit suicide. A strait-waistcoat was procured, and all apprehensions of her succeeding in gratifying the propensity of self-destruction was removed. Some weeks elapsed before she recovered. To all appearance she was perfectly well. She had no recollection of what had transpired, and expressed herself amazed when she was told that she wished to kill herself. Two months after she left her bed, she was missed. Search was made in every direction, but in vain. After a lapse of two days, she was discovered floating in a pond of water several miles from her home. In her pocket was discovered a piece of paper, on which were written the following lines: "Oh, the misery and wretchedness I have experienced for the last month, no one but myself can tell. A demon haunts me—life is insupportable. A voice tells me that I am destined to fall by my own hands. I leave this world for another, where I hope to enjoy more happiness. Adieu." (Winslow's Anatomy of Suicide, pp. 75, 76. See a very interesting essay on the last sentiments of suicides, by Dr. A. Brierre de Boismont, translated in the Journal of Psychological Medicine, Vol. IV. p. 243.)

(q) *Borradale v. Hunter*, 5 Man. & Gr. 639.

(r) *Schwabt v. Clift*, 2 Car. & Kir. 134.

(rr) *Clift v. Schwabt*, 3 Man. & Gr. 437.

(s) *Breasted v. Farmers' Loan Co.* 2 Am. Law Reg. 358.

that the defendants would have been liable. They insured the continuance of his life. What difference can it make to them, or to him, whether it is terminated by the ordinary course of the disease in his bed, or whether, in a fit of delirium, he ends it himself? In each case, the death is occasioned by a means within the meaning of the policy, if the exception contemplates, as I think it does, the destruction of life by the intestate, while a rational agent, responsible for his act. It is competent, no doubt, for the insurer so to frame his policy, as to exclude him from liability for a death occasioned in a fit of insanity. The parties have not done so in the present case." It is worthy of observation, however, that the force of this authority, like that of its predecessor, is broken by its having been decided by a divided court.(s)

(8.) *Fanatico-Mania.*

§ 209. Using this term in its most liberal sense, it may be considered as including two things:

(a.) Supernatural or pseudo-supernatural demoniacal possession.

(b.) Mental alienation on religious subjects.

§ 210. (a.) *Supernatural or pseudo-supernatural demoniacal possession.* Whether or no the gospel narratives inculcate directly the fact of demoniacal possession is the subject of much discussion among commentators; but, as will presently be seen, there is no doubt that profane history unites in supposing such possession to exist. The first point for us now to consider is the *a priori* probability of such interpositions. And it should be here observed that in respect to the general policy of Divine government, it has been very ably shown by Edwards, representing the orthodox Christian school, and by Hume, representing the deistical, that when the existence of the extraneous and objective power of *sin* as a demoniac influence is once admitted, it is as consistent with the Divine perfection that such influence should exhibit itself in one way as in another. The only question that remains to be considered, therefore, is that which Hume reserved, viz: whether or no there is such *universal experience* against supernatural interpositions as to lead to the conclusion that they never existed. And the affirmative of this proposition, as Dr. Campbell shows us, is beset with unsurmountable difficulties. To prove "experience to have been universal" it must be shown that no man ever witnessed a phenomenon contradicting it. This, however, is a *petitio principii*, for whether or no such phenomena have been observed is the very point in controversy.

§ 211. The fact is, to resolve this question, we must resort to the Divine policy of government as well as to human experience as a guide. And here we have little difficulty in arriving at a conclusion which harmonizes as fully with an enlightened theology as it does with present psychical observation. To the carrying on of the Divine government of the world established and uniform principles are necessary, which,

(s) See Law Times, July 18, 1846, p. 342; Taylor's Med. Jurisprudence, pp. 592, 593. On the subject of verdicts of *Felo de se*, see a very interesting article in the Journ. of Psychol. Med. Vol. III. p. 19.

whether relating to the physical or the moral world, are called the *laws of nature*. These laws, to adopt the definition in which both philosophical and theological criticism unite, may be treated as the uniform plan according to which God exercises his power throughout the created universe. But then, if in conducting the affairs of vast governments, God, in his infinite wisdom—which finite minds cannot measure—finds in a special case as good a reason for a *deviation* from this method as there usually is for adherence to it, then unquestionably the same power that applied this law to the general line of cases would withdraw it from the exception. If, however, we reason from the nature of the thing, we should conclude such deviations to be very rare, and, in fact, to be confined to those great epochs when it is intended that an extraordinary message is to be communicated which it is designed that these deviations shall vouch. For if they were made frequent, it is plain that they would cease to be vouchers.

We come, then, to the question whether we have evidence from history that there has ever been such a systematic deviation from the Divine policy as is implied by the entrance of specific evil spirits into specific human bodies, followed by a supernatural subjection of the will if not by a merging of the individuality of the latter in the former. There is little doubt that this was taught by the ancient philosophers. Plato begins by expressly asserting the existence of demons, who, on his theory, are the sole supernatural agencies by which the Divine will operates on the human heart. Πᾶν τὸ δαιμόνιον μεταξύ ἐστὶ θεοῦ τε καὶ θνητοῦ. And again Ἑρμηνεύον καὶ διαπορθεύον θεοὺς τὰ παρ' ἀνθρώπων, καὶ ἀνθρώποις τὰ παρὰ θεῶν, τῶν μὲν τὰς δειήσεις καὶ θυσίας, τῶν δὲ τὰς ἐπιτάξεις τε καὶ ἀμοιβὰς τῶν θυσίων.(f) He tells us that demoniacs do not use their own dialect or tongue, but that of the demons who have entered into them.(u) Lucian declares “the *patient* is silent: the demon returns the answer to the question asked.” And yet at the same time it would seem that the possibility of the cure of the demoniacs by medicine was recognized, which would scarcely be the case if the malady was regarded as exclusively supernatural. Thus we are told, “Helleboro quoque purgatur *lymphaticus* error.”(v) And Josephus and the Jewish physicians speak of medicines composed of stones, roots, and herbs, being useful to demoniacs.(w)

§ 212. With regard to the New Testament history, two views have been taken, each of which has the sanction of great authority both for learning and for loyalty to the Christian cause. On the one hand, it is urged that the language of the Gospel writers is express to the very point; on the other, it is maintained that the accounts given by them may all be understood as exhibiting no more than the phenomena of certain diseases, particularly hypochondria, mania, and epilepsy; that the *popular* terms were used to describe these diseases, just in the same way that “Possession,” (Besessenheit) is now used by some of the most technical German psychologists to describe the same thing; and that the sacred penmen meant to convey no more than that the patients

(f) Plato, Sympos. p. 202, 203. Lipsiæ, 1829, p. 252. See also Plutarch, De Defect. Orac. Farmer's Essay on the Demoniacs.

(u) Plato, *apud* Clem. Alex. Strom. I. 405, Oxon.

(v) Seren. Sammon, c. 27, v. 507.

(w) Gittei, f. 67.

were affected with the complaints which those phrases described. (x) It may not be considered out of place, however, to observe that the excessive theological liberality which, in order to accommodate the sacred text to the supposed requirements of science, resolves statements of facts into metaphors and narratives into parables, is in this, as in most other respects, insufficient to reconcile the captious, and is unnecessary for the purpose of relieving the sincere inquirer. Those who have gone such great lengths in thus adopting the statements of our Lord's treatment of the demoniacs to the supposed standard of modern medical experience, would do well to observe how unnecessary their labors appear to one of the most eminent and experienced of modern physicians. "We have heard these, and similar cases," says Dr. Cheyne, "accounted for on the assumption of demonism, but we never have seen a case of disordered mind, even when attended with the most subtle malignity, which could not more easily be explained upon natural principles. We acknowledge the power of Satan, and it may be as great as ever in the dark places of the earth, which have received no benefit from Christianity; but as there are no rules for distinguishing between the workings of the human mind, when influenced by bodily disease—when yielding to its unrestrained propensity to evil, and when acted upon by Satan, the extent of Satanic agency cannot be known, nor ought the mode of its operation be assumed upon conjecture. It is one of the devices of man's great enemy, to have his power, nay, his existence, denied by those who are his subjects; and we can only play his game, and confirm Sadducean principles, when we allege of Satan what we cannot prove. Probably nothing so much weakened the influence of Luther as his account of his conflicts with the devil. The mind of the reformer yielded to delusions practiced upon it by his senses; and consequently many who are unwilling to admit the power of his judgment and the rectitude of his principles, especially the minions of superstition, and the abettors of infidelity, have persuaded themselves that the master-spirit of his age—with whom the Charleses, the Henrys, and the Francises, were no more to be compared than Ahab was with Elijah—was a dreaming and credulous enthusiast. Those who admit the authority of Scripture are not permitted to doubt that when our Lord cured the demoniacs, he actually dispossessed them. It could not have been, as some have alleged, that he merely removed epilepsy or insanity. Without entering into all the particulars of the discussion, any Christian who will read with attention the fourth and eighth chapters of St. Matthew's gospel, must reject the hypothesis of Mede, that the demoniacs mentioned in the gospels labored under natural diseases. In the fourth chapter it is expressly specified that our Lord 'healed all sick people that were

(x) The student is referred to a very comprehensive article on this point, by the Rev. J. F. Denham, of St. John's College, Cambridge, in Kitto's *Bib. Cyc. tit. Demoniacs*, in which the arguments on both sides are very fairly exhibited; to Farmer's *Essay on the Demoniacs*; to Jahn's *Biblisches Archäologie*; to Winer's *Biblisches Real Wörterbuch*, art "Besessene;" to Moses Stuart's sketches of *Angelogy*, in *Bibliotheca Sacra*, 1843; to Bishop Burgess' sermon on *Demonology*, in the *Phil. course of Lectures on Evidences*, *Phil.* 1854; to President Appleton's discourse on the same; and to a very brilliant though eccentric treatise, recently published, under the title of "*The Apocatastasis Progress Backwards.*" Burlington, 1854.

taken with divers diseases and torments,' including epilepsy, we may fairly infer, 'and those which were possessed with devils,' a separate class, 'and those which were lunatic,' or of unsound mind. In the eighth chapter, the same distinction is observable between casting out devils and curing diseases: sixteenth verse, 'and he cast out the spirits with his word, and healed all that were sick.' But the relation which decides the question is that of the miracle performed in the country of the Gergesenes. (y) Before we can believe that the two men who came out of the tombs were maniacs or epileptics, it must be proved that disease is not merely a mode of animal life, but something substantive and transferable from one class of beings to another—from man to the lower animals." (z)

§ 213. Without, therefore, any further attempt to determine the question whether demoniac possession is taught as a fact by history, either sacred or profane, we come to the inquiry as to whether it exists at the present day. And we feel ourselves warranted in saying, without any hesitation, that in a lego-psychological view, we have no evidence of any such possession. All modern phenomena can be satisfied by the recognition of the independent existence of that species of mania which causes an insane belief in the patient that he is possessed with a demon. (a)

§ 214. (b.) *Mental alienation on religious subjects.*

As is well remarked by Dr. Rush, (b) in *Christian* countries, departures from the *Christian* faith, (e. g. infidelity and atheism,) are "frequent causes" of insanity. (c) And the same is equally true of

(y) Matt. viii. 28.

(z) Essays on Derangement in connection with Religion, by John Cheyne, M. D., F. R. S. E., M. R. I. A., Physician General to His Majesty's Forces in Ireland. Dublin, 1843, p. 68, &c.

(a) Schürmayer, *Gericht. Med.* § 550. For a case of supposed Demoniacal Possession, see *Journal of Psychological Medicine*, vol. iii. p. 262; Metzger's *verm. Schrift.* Bd. 3, s. 217; Ces. Ruggieri's history of the self-crucifixion of M. Lovati at Venice, translated by Schlegel, Rudolst, 1807. (In the latter case, the patient first cut off his own private members, and then crucified himself.) Henke's *Zeitschr.* E-H., 11 s. 291—(Two Swiss girls, who immolated themselves.) Henke's *Zeitschr.* Bd. 47, p. 447. Pyl's essay, 6 *Samml.* p. 214. (Infanticide by a demoniac.) Henke's *Zeitschr.* 27 Bd. p. 330—(Periodical Demonio-mania.) Demoniacal possession, as Siebold (*Gericht. Med.* § 210) very justly remarks, was much more common in former days than the present, and of this, to say nothing of the New Testament period, illustrations may be found in the many cases of witches, seers and soothsayers, of the middle ages.—The Convulsions, &c., of St. Medard fall under this head. See Hecker on the Dancing Mania, *Berl.* 1832; Published also by the Sydenham Society. See also case, *ante*, § 584, note (z). And also a series of very curious and valuable articles on Pythonic and Demoniac Possession in *Dublin Univ. Mag.* for Sept. and Oct., 1848, for March and Dec., 1849, and for January, 1850.

(b) Rush on the Mind, 64.

(c) Mr. Winslow, in his late interesting work on suicide, gives us the following instances of this: "It may be mentioned, as a fact corroborating the opinion, that productions of an infidel character have a tendency to originate a disposition to suicide, by weakening the moral principles; that when the celebrated and notorious Tom Paine's "Age of Reason" was first published, the papers of the day recorded many cases of self-murder, committed by persons who avowed that the idea never entered their heads until they had become familiar with the above-mentioned writer. An individual, zealous in the diffusion of Paine's principles, purchased several hundred copies of his work, which he most industriously circulated, gratuitously, in quarters where he knew the doctrines of Christianity had already obtained a footing. A copy of the "Age of Reason," elegantly bound, was received by a young lady who was acting in the capacity of gover-

departures in the direction of ignorant and fanatical superstition. The *former* position is readily explained. The soul, as well as the body, to enable it to stand steadily, requires that the eye shall be fixed upon some distant and external point. No man, for instance, can succeed in standing on one foot if he fixes his eye on his own person; and he succeeds in maintaining his upright position precisely to the extent he is able to fix his eye firmly on a point in the distance. And in a psychological view this is readily explicable. It is only by the recognition of a *future* state that the soul can be effectually steadied in *this*. And it is precisely such a system as the Christian religion describes,—one which affords a positive assurance of immortal peace to those who seize upon it for their portion,—which, while it recognizes that innate depravity, which the heart is but too ready to testify to from its own experience, promises divine aid in the struggle—which announces the pardon of past sin by a vicarious atonement, while it affords to the creature the aid and succour in all his troubles, of a divine friend and yet of a human example.

“I envy no qualities of the mind or intellect in others, nor genius, nor power, wit or fancy,” says Sir H. Davy: “but if I could choose what would be most delightful, and, I believe, most useful to me, I

ness in the family of a gentleman of great respectability. The lady had no conception from whom the present came, and having heard of the book she felt a curiosity to become acquainted with the doctrines which it inculcated. The circumstance of her having received the book was not mentioned to any member of the family with whom she resided, and in the evening when she retired to her own room, she read it with great attention. The family noticed, in a few weeks, a perceptible alteration in the appearance of the young lady. She became exceedingly thoughtful and contemplative. Her health also appeared sensibly affected. The mother of the children whom she was instructing took advantage of the first opportunity of speaking to her on the subject. She expressed herself very unhappy in her mind, but refused to disclose the cause of her mental uneasiness. It was thought she had formed an attachment, and was suffering from the effects of disappointed affection. She was questioned on these points, but persisted in concealing the circumstances which had been operating so injuriously on her mind. The mental dejection increased, and the result was an alarming attack of nervous fever, of which she was cured by an able physician with much difficulty. When convalescent she was noticed one day busily employed in writing, and when interrupted showed great anxiety to secrete the piece of paper on which she had been transcribing her thoughts. In the course of the evening of the same day, a deep groan was heard to issue from her room. The servant immediately entered, when, to her great horror, she saw the governess on the floor with a terrible gash in her throat. Assistance was directly obtained; but, alas! not in time to save the life of the poor unfortunate girl. On searching her desk, a sheet of paper was discovered, on which she had disclosed her reasons for the rash act. She said, that from the moment she read the “Age of Reason,” her mind became unsettled. Her previous religious impressions were undermined; in proportion as she was induced to imbibe the doctrines of Tom Paine, so she became miserable and wretched. From one error she fell into another, until she actually believed that death was annihilation; and although she appeared firmly rooted in this belief, she expressed herself horrified beyond all expression at the bare idea of dissolution. For some time prior to her illness, she had felt an impulse to sacrifice her life, but had not the courage to perform the act. After her recovery, she felt the impulse renewed with increased strength, until, with a hope of escaping from an accumulation of misery which was weighing her to the earth, she determined to commit suicide. She also, in the document referred to, asked her friends to forgive her, and to take warning from her fate.”—*Winslow's Anatomy of Suicide*, pp. 87–89. It has been asserted, and remains uncontradicted, that Mr. Hume, lent his “Essay on Suicide,” to a friend, who, on returning it, told him it was a most excellent performance, and pleased him better than any thing he had read for a long time. In order to give Hume a practical exhibition of the effect of his defence of suicide, his friend shot himself the day after returning him the essay.—*Winslow's Anatomy of Suicide*, pp. 31, 32.

should prefer a *firm religious belief to every other blessing*: for it makes life a discipline of goodness; creates new hopes when all earthly hopes vanish; and throws over the decay, the destruction of existence, the most gorgeous of all lights; awakens life in death, and calls out from corruption and decay, beauty and everlasting glory."

§ 215. The habitual practical recognition and adoption of such a system as this must necessarily generate a sobriety of temper, which will of all others be the most distant from derangement. That the reception of Christianity, whether real or nominal, should *cure* insanity, is no more to be expected than that it should cure the small-pox. If it did—if a special miracle was wrought for the purpose of destroying the original characteristics of each individual, it would not only destroy moral agency and hence break up probation, but would produce an almost entire derangement of human affairs by obliterating the marks of individuality, to say nothing of identity.

To the same effect are the following just observations of Dr. Copland: "It must not be supposed, from what I have advanced, that the Christian religion is truly chargeable with causing insanity; it actually has an opposite tendency. Mistaken views, excessive fervour, unfounded fears, and various feelings arising from these sources, are the only causes of insanity in connection with religion. Among those who entertain just and sober opinions on religious topics—who make Christian doctrines the basis of their morals, the governors of their passions, the soothers of their cares and their hopes of futurity—insanity rarely occurs. The moral causes of derangement which would not fail of producing injurious effects on others, prove innocuous in them, for these causes would be met by controlling and calming considerations and sentiments, such as would deprive them of intensity or neutralize their effects. Truly religious sentiments and obligations soothe the more turbulent emotions, furnish consolations in affliction, heal the wounded feelings, administer hopes to the desponding, and arrest the hands of violence and despair."(*d*)

And the testimony of Dr. Cheyne, who stood for many years at the head of the medical profession in Ireland, occupying the responsible post in that kingdom of physician-general to the forces, is equally emphatic: "Our experience of, and inquiries into the nature of insanity, during a period of forty years," he says, "enable us to say, that such cases as that which we have just related," (those of insanity from morbidity of the religious affections,) "are not in the proportion of one in a thousand to the instances of insanity which arise from wounded pride or disappointed ambition."(*e*) "True religion," he tells us in another place,"(*f*) is a preservative, although not a complete preservative against derangement of the mind. We have no intention of concealing that we have known many instances of insanity among believers, but it was not caused by their creed. We have also known instances in which all sense of religion has been permanently destroyed by insanity. Of such cases we would remark, that the believer has no right to expect

(*d*) Copland Med. Dict., Art. "Insanity."

(*e*) Cheyne on Derangement in connection with Religion, pp. 178, 179.

(*f*) Ibid. p. 146.

for his believing friend exemption from evils arising from the state of the body, on which insanity always depends. Let him moreover recollect, that as total insanity puts an end to moral accountability, nothing which may take place during a paroxysm of the disorder, can affect the future happiness of his friend."

"When fairly examined," says Dr. Combe, "the danger is seen to arise solely from an *abuse* of religion, and the best safeguard is found to consist in a right understanding of its principles and submission to its precepts. For if the best Christian be he, who in meekness, humility, and sincerity, places his trust in God, and seeks to fulfill all his commandments, then he who exhausts his soul in devotion, and at the same time finds no leisure or no inclination for attending to the common duties of his station, and who so far from arriving at happiness or peace of mind, becomes every day the more estranged from them, and finds himself at last involved in disease and despair, cannot be held as a follower of Christ, but must rather be held as a follower of a phantom assuming the aspect of religion. When insanity attacks the latter, it is obviously not religion that is its cause; it is only the absence of certain feelings, the regulated activity of which is necessary to the right exercise of religion; and against such abuse a sense of religion would, in fact, have been the most powerful protection. And the great benefit of knowing this is, that whenever we shall meet with such a blind and misdirected excess of our best feelings in a constitutionally—nervous or hereditarily—predisposed subject, instead of encouraging its exuberance, we should use every effort to temper the excess, to inculcate sounder views, and to point out the inseparable connection which the Creator has established between the true dictates of religion and the practical duties of life, which it is a part of his purpose in sending us here to fulfill."

§ 216. These views are not uncorroborated by practical observation. It is not necessary to record the cases where mania, particularly that of the suicidal cast, has been generated by an undue estimate of the importance of this life's incidents as compared with those of the next. (*g*) On the other hand we may find a pregnant illustration of the converse process by the fact mentioned in the thirteenth report of the Hartford Retreat, that two hundred and eight farmers, fifty-eight merchants, and thirty-four day-laborers have been admitted into that institution to four clergymen. (*h*) And in a very capable pamphlet, published in Phila-

(*g*) Dr. Rush, after noticing the fact that 150 suicides having taken place in Paris in the year 1782, and but 32 in London, says, "It is probable the greater portion of infidels in the former than in the latter city, at that time, may have occasioned a difference in the number of deaths in the two places, for suicide will naturally follow small degrees of insanity, where there are no habits of moral order from religion, and no belief in a future state." Rush on the Mind, p. 69.

(*h*) The chaplain in the same report states: "The usual week-day services in the chapel of the institution, singing, reading the Scriptures, and prayer, have been performed during the year. On the afternoon of the Sabbath, there have been religious exercises similar to those in other Christian congregations. The singing is still conducted by a choir composed of the attendants and patients, and adds much to the interest and value of the services. In these various exercises the patients have engaged with gratifying decorum and solemnity. Strangers who for the first time are present at our worship in the chapel, often express surprise at their apparent devotion, and the stillness and steady



delphia in 1850, on this very point—a pamphlet which, though anonymous, is understood to have been written by a gentleman of great experience in the discipline of insane convicts, and to have been revised and approved by the two very eminent principals of the two chief Philadelphia lunatic asylums<sup>(i)</sup>—the history of what is called religious insanity is thus traced: “The unsubdued temper of a child exhibits itself in paroxysms of passion. Every little disappointment occasions violent irritation. This morbid impatience ripens into sullen discontent with all the allotments of life. The unhappy creature persuades himself that an evil spirit haunts all his footsteps and rules his destiny. This conception is easily made to assume a religious phase or association, and is succeeded by settled gloom, which the hospital register or the news-

attention with which they listen to divine truth. Indeed, it is believed that few congregations of the sane, in an ordinary state of feeling, exceed them in these respects.

“A sense of need opens a way for the gospel to the hearts of these sufferers. The service checks, for a few moments at least, the dark current of sorrow, calls the wandering mind away from its delusions, and aids in forming a healthful self-control. A sense of propriety, the strong associations connected with such scenes in happier days, and the quiet of fellow worshippers, combine to restrain outbursts of feeling which they are often unable to resist in their own rooms. And aside from these influences of religious worship, who shall set limits to the great Physician of both soul and body, in making the gospel a means of moral renovation to the deranged mind?

“Increasing experience strengthens my conviction that the distinguishing principles of the gospel are no less adapted to the mind when disordered, than when in its normal state. In the former case, indeed, more care and a different mode of exhibition are demanded; but these principles unfolded calmly and clearly, in the sober manner of the Bible, will find as ready and intelligent and cordial a response in a congregation of the insane as in most others.

“The full value of the gospel in relation to mental derangement, both as a preventive and a remedy, is not, it is believed, fully appreciated. Official reports show that cases of insanity, in great numbers, result from causes against which the controlling daily influence of religious principle would guard the mind. By checking vices which prey on the body and mental feelings, such as envy, jealousy, inordinate grief, which waste its energies, the gospel prevents diseases that result in insanity.”

The fact that sound religious discipline exercises a salutary influence in assuaging the malady, does not, of course, go to refute the position that *unsound* religious excitement may not have produced it; but it *does* show that a judicious presentation of the sanctions of religion—even involving their most solemn features—is a conservative and not a distracting influence. The reports of Dr. Kirkbride and Dr. Woodward are strong to this point; and we cannot refrain from adding to them the following testimony from Miss Dix:

“That among the hundreds of crazy people with whom her sacred missions have brought her into companionship, she has not found one individual, however fierce and turbulent, that could not be calmed by Scripture and prayer, uttered in low and gentle tones. The power of religious sentiments over those shattered souls seems miraculous. The worship of a quiet, loving heart, affects them like a voice from heaven. Tearing and rending, yelling and stamping, singing and groaning, gradually subside into silence, and they fall on their knees, or gaze upwards with clasped hands, as if they saw through the opening darkness a golden gleam from their Father’s throne of love.”

Armed with this gentle influence, we are told by an observer, she does not fear the violence of the madman. Well do we remember an instance that we heard from her own lips, in which she entered the cell of a maniac, against the remonstrances of the terrified keeper. As she persisted in entering, the door was instantly closed behind her to prevent escape. Alone she stood face to face with that wild man. He raised himself in a threatening attitude, and glared upon her with his fierce eye. She opened the Bible, and read the words of a Psalm. After a few lines, he bent his head to listen. The look of rage and terror passed from his countenance. His eye grew less wild, and sent forth sweet, blessed tears, until the madman sank down at that helpless woman’s feet. And as she finished, he said, Will you read those words again?

(i) The relations of Religion to what are called “Diseases of the Mind,” Phila. J. W. Moore, 1850.

papers record as a case of religious melancholy, whereas it is really a case of ripe stubbornness.

“We might readily illustrate our position by actual cases of disappointed ambition or affection. As where one has aspired to high distinction, and has suffered a defeat so unexpected and mortifying as to unhinge the mind, it is natural that he should assume some exalted character, and insanely suppose himself to be a king, or even the King of Kings. Or when the young affections have been so sadly blighted as to veil all the joys and hopes of life, and excite a disgust for life itself, we might expect that reason, overpowered by such a shock, would lead the sufferer into some morbid conception of herself, that would be most congenial to seclusion and a renunciation of the world; and hence she is very likely to assume the character of the Virgin Mary, or to hold herself in readiness for an extraordinary holy service as a companion of some angelic potentate. These are not fictitious cases. They have had their parallel if not their counterpart in many lunatic hospitals, and in neither of them, we apprehend, could there be found a single feature to justify us in classing them among cases of “religious insanity,” or in ascribing to religion the remotest connection with their unhappy state.

“If in the instances just cited, and others of like character, faith in God had been a controlling principle, the mind would probably have stayed itself on Him, and its integrity would have been preserved. Have our readers never known a lone woman, in humble life, buffeting courageously with the rising tide of disappointment and sorrow;—a kind and faithful husband removed by death: the means of daily sustenance straitened, perhaps almost to penury; a promising son proving reprobate; a helpful and cheerful daughter deprived of sight, and another prostrate under the power of chronic disease—have they never known such an one in these or like circumstances reposing her trust in her covenant God, and saying with the afflicted but not despairing patriarch, ‘Shall we receive good at the hand of God, and shall we not receive evil?’ Or in the words of one who knew the bitterness of grief,

‘My lifted eye without a tear,  
The gathering storm shall see;  
My steadfast heart shall know no fear;  
That heart shall trust in thee.’

“It is not a superior mind, nor high moral gifts that makes this obvious difference. It is that in the one case religion is inculcated, and the mind entertains it as an infinitely pure and welcome system of divine truth, embraces its sublime and often mysterious doctrines as a little child receives the lessons of paternal wisdom, and esteems its precepts as just and good, and worthy of prompt and cheerful obedience. God’s providence is regarded as directing and overruling all; and the spontaneous language of the soul is, ‘Though he slay me, yet will I trust in him. Though the fig-tree shall not blossom, neither shall fruit be in the vines, the labor of the olive shall fail, and the field shall yield no meat, the flocks shall be cut off from the fold, and there shall be no herd in the stall, yet will I rejoice in the Lord, I will joy in the God of my salvation.’

“In the other case a perverse, fretful, impatient spirit, indulged in childhood, falls, and is utterly cast down in the first conflict with the stern realities of life, and becomes the prey of fitful melancholy, if not of settled *mania*.”

§ 217. The *history* of religious insanity in this country goes a great way to fortify the position that it is to a *departure* from the gospel system that most cases of what may be called Dæmonio-mania may be traced. This is shown with peculiar ability as well as weight of experience in the following passages from the pamphlet which has been just noticed :

“Passing over the many instances of such erratic and fanatical extravagances which history records, and to some of which the review before us alludes, we will glance at two recent and notable ones, occurring among ourselves, that we may the better judge whether religion makes men insane, or whether it merely fails, in many cases, to bring them to their right mind ; so that it may be said that they continue insane in spite of all that religion can do for them.

“A clergyman, in infirm health, sought to amuse his listless hours by framing a puerile romance, after the manner of eastern fabulists, with names, dates and localities, bearing no relation to sober history. These writings, in some way, without the author’s privity, came into the hands of strangers. In 1826, one Joseph Smith professed to have found, in the town of Palmyra, N. Y., some brass plates enclosed in a box, such as is used for packing window-glass. Of these plates he pretended to be the interpreter. With a stone in his hat, and his hat over his eyes, he dictated what a man, named Harris, wrote. In consequence of some dispute, Harris departed before the interpretation was ended, and one Cowdrey took his place and completed the ‘Book of Mormon.’ Smith then avowed himself a prophet, and the founder of a new dispensation, and gathered many disciples, who accompanied him to the state of Missouri, where they established a city and built a temple. We need not pursue their adventures.

“The contents of the Book of Mormon, or the Mormon Bible, were neither more nor less than the self-same tales of romance which the invalid clergyman amused himself with writing. A large number of persons, however, embraced the delusion ; many abandoned a profitable business ; some sacrificed large property, and not a few were ruined in soul, body and estate, by putting their trust in this barefaced imposture.

“It is perfectly obvious, we think, that a mind well informed and established in the received doctrines of the Christian faith, and endued with but very ordinary discernment, would be proof against so bold an imposture. If any intelligent and respectable persons joined the Mormon ranks, that, of itself, shows either a predisposition to insanity, which this fanciful revelation was fitted to develop, but with which religion has no connection whatever ; or that there is a deficiency of discernment, or a neglect or abuse of the reasoning powers, or a morbid love of distinction and notoriety, to gratify which they are willing to sacrifice all other interests. If a judicious, faithful parent or Sunday-school teacher had given direction to their inquiries and furnished their minds with just and systematic, though exceedingly

simple, views of the doctrines of revelation, they would have had balances wherewith to weigh the pretensions of the new prophet, and by means of these vanity and falsehood would have been made manifest.

“At a somewhat later period, a man named Miller, (a Baptist minister, as it is said,) professed to have had a revelation of the precise day on which the second advent of Christ would occur, and when his people would be called to rise and meet him in the air! He and his deluded apostles, or agents, went from town to town and from house to house, ‘leading captive silly women,’ and imposing upon the credulity of the ignorant. So settled was the conviction of many minds of the truth of his predictions, that they arranged their worldly affairs in reference to it, as an ascertained event, and made no contracts extending beyond the designated day. Prosperous citizens sold their estates, and declined the ordinary avocations of life, that they might give themselves wholly to the business of preparation; and, as the eventful period drew nigh, many evinced the sincerity of their convictions by providing what they regarded as suitable apparel for an aerial flight; and some actually assembled in groups upon summits which might be supposed most favorable to an early and easy ascension! The dupes of the false prophet were counted by thousands. Scores were committed to insane asylums who were crazed with excitement, or with disappointment; and many within and without the charmed circle were doubtless left to believe that all revelations are as idle and delusive as Millerism.”(k)

“We need not say how the plainest scriptures must have been wrested from their true intent and meaning, nor how deaf an ear must have been turned to the voice of reason and common sense, before the mind could have surrendered itself to such a fancy. There is not a trace of insanity, however, in any stage of the process. It is a simple, voluntary subjection of reason to the influence of imagination or superstition, instead of a childlike submission of all the powers and faculties of body and mind to the revealed will of God. And, although we may admit that such delusions have, in many instances, been the ostensible cause of insanity, as our hospital returns allege,—“revealed religion” is no more responsible for them than for paroxysms of *mania-a-potu*. It is because the plain truths of revealed religion were misapprehended, perverted or rejected, that the imposture succeeded, and the mind was led captive by Satan at his will. It is not strange that a vessel left to itself, on a stormy sea should, sooner or later, go to the bottom, or fall into the hands of wreckers.”(l)

By the same able writer the following propositions are laid down:—

§ 218. “I. It is as unjust to ascribe cases of what is commonly called ‘religious insanity’ to religion, as their cause, as it would be to charge our insane hospitals with originating or confirming the cases which they do not cure.”(m)

(k) See an Essay on this point, in 1 Am. Jour. of Insan. 249.

(l) Relations of Religion to what are called Diseases of the mind. Phil. J. W. Moore, 1850.

(m) The third annual report of the Ohio Lunatic Asylum very justly remarks in this connection:—“There is no country where the subject of religion is more immediately and forcibly brought home to the heart and conscience than in the United States. It is

“II. There is no such thing as religious insanity: i. e. it cannot be said of religion, as it can be of grief, or disappointment, or chagrin, that it causes insanity.

one, too, upon which every variety of opinion exists. Unlimited discussion is in constant practice among all classes; and the feelings and apprehensions of our nature are much aroused, and frequently excited. And it cannot be doubted that in many cases where persons are predisposed to this fearful disease by natural constitution, incorrect education, feeble health, and other circumstances, anxieties connected with the awful realities of eternity and the immortality of the soul, have been the exciting causes of mental derangement. But pure and undefiled religion, whose genial influences shed peace and joy over the path of our existence, and light us with elevated hopes to the prospects of a happy eternity, can, in its unperverted results, have no such injurious effects upon the mind. ‘The caviler may accuse religion of producing insanity, but he does not see how many causes of insanity it averts; how much comfort it affords to the weary and heavy laden, how effectually it buoys up the desponding, and how directly it points out to the transgressor the way of pardon and peace.’\* As the result of some attention to this matter, we feel satisfied that the true remote cause of insanity, *very frequently lies behind the religious influences which appear so conspicuous*, that, at most, religion can only be accused as the *occasional or exciting cause of a disease whose foundation is completely established in the system*; that, in a great many of these cases, the mental derangement will be found mainly to depend upon ill health, or that peculiar debility and irritation of the nervous system which so frequently follow various acute disorders that severally try the organic structure, and, in not a few instances, so far is the disease of the mind from a religious origin, that it is clearly and properly chargeable to the indulgences of vicious habits. It is certainly a fact, that a maniac may imbibe a religious, as well as any other extravagant delusion, and yet his derangement may be occasioned by the reverse of any thing like a religious cause. Some, indeed, never appear to speak seriously upon the subject of religion, only when they are crazy, and then it would seem as if the anguish of remorse had commenced a drill upon the disturbed and distracted conscience. ‘But the religious only *appear* to constitute the largest number of exciting causes in our annual reports; for if we carefully analyze the tables, and faithfully consider those of intemperance, ill treatment, domestic trouble, jealousy, masturbation, and perhaps several others, with a fair proportion of the unknown, it will be found that vice predominates, and its victims far exceed all others.’—*Journal of Psychological Medicine*, Vol. III. pp. 474, 475.

On this subject Morel says: “All the depressive forms are far from presenting such symptoms. There are certain melancholic patients who, with the external symptoms of sadness, feel a certain pleasure in remaining concentrated upon their delirious conceptions. They finish by believing themselves exceptional men; the hallucinations of sight and hearing, frequent in them, tend to keep up these new ideas. It is not unfrequent to see individuals who were first presented to our observation with a delirium of humility, become, in consequence of the systematization of their ideas, impressed with the belief that they are prophets, New Messiahs, &c. The depressive form is then replaced by the form accompanied with excitement, and we have regular maniacs to treat. An old gendarme, pursued for a long time by the blackest ideas, and thinking himself damned, is to day a maniac of this description, (and these are often the most dangerous.) He thinks himself the husband of the Virgin, he sees and hears her, he receives her inspirations, and as these cannot separate themselves completely from the prejudices he formerly imbibed in his terrors, he pursues us with his anathemas, and daily predicts for us the most horrible end.

“Another lypomaniac who has spent all his fortune in travelling to the most celebrated spots of Christendom, in hope of finding a relief for his exaggerated fears of Hell, is to day in a veritable state of exaltation, because the Holy Ghost has revealed itself to him. The heavens are open to his looks; the Apocalypse has no longer any mysteries for his mind; if we attempt to combat his follies, he overwhelms us with scorn and contempt and will not answer men, who only live in the lust of their passions and in the corruption of the flesh. Insane of this class have been called demonomaniacs, but they do not always present themselves in such a high state of exaltation. The following is a case of lypomania, which would formerly have been considered as a perfect example of demonomania: S—, is twenty-three years old, and the exaggeration of his religious feelings has been the starting point of his insanity. Two years ago S. still worked and talked; since then he will no longer do any thing, or answer any question. The hesitation that he showed in performing the most ordinary acts of life, alone indicated his

\*Dr. Woodward.

“III. To inculcate the doctrines, as well as the precepts, of revealed religion upon the human mind, at the earliest period of its capacity to receive them, is the clear scriptural duty of all persons who have the care of children and youth.

superstitious terror, and the excessive fear of offending God that possessed him. He was constantly reproaching himself for imaginary faults, and spent his time in fastings that destroyed his health. It often happened that he no longer wished to eat, and when by the use of the douche we compelled him to take nourishment, he murmured in a low voice, “That Thy will, Lord, may be done; pardon them, they know not what they do: what happiness it is to die for Thy holy name.” A moment out of sight, and he would place himself upon his knees, and remain in that position entire days, wrapped up in his fixed idea, and beating his head against the wall. A year ago, I tried to make him go to chapel, and was astonished at his opposition; he clung to the door and made an extraordinary resistance, notwithstanding his state of extreme emaciation. When, to-day, they threaten to conduct him to chapel, when any one brings a crucifix near him, or attempts to make the sign of the cross upon him, his sensations are shown in a striking manner in the expression of his face, and in his gestures. His face becomes flushed, he sighs profoundly, stops his cars, and his resistance betrays itself in a struggle, in which he displays a violence and an energy of which one would not think him capable.” See *Études Cliniques des Maladies Mentales*, par M. Morel. Tome I. p. 391. Paris, 1852.—Also, *Études Psychologiques sur l'Aliénation Mentale*, per L. F. E. Renaudin. Chap. X. p. 674. Paris, 1854.

“Religious monomania,” says M. Renaudin, “which for a long time was thought to be more common in women than in men, appears to divide itself equally between the two sexes. But it exhibits in its manifestations the influence peculiar to the physical and moral idiosyncrasy of each. The hysterical element in women plays an important part, and the ecstatic state in them is more convulsive than in man; and this explains to us the reason why the devil figures more in delirium in that sex. The immunity of the Romish clergy, socially speaking, from this form of mental unsoundness may be attributed to the principle of authority that governs them, which they can sometimes evade, but from which they can never escape. Besides the clerical life is an active one, and if it does present something exceptional which separates it from men, the obligations of the ministry temper whatever danger this isolation may possess. Communities of women, on the contrary, present more numerous openings to this disease, especially when they are submitted to the danger of a contemplative life. This temper is not unlikely to terminate in exhaustion and lypomania, or hysterical mania.

In religious monomania we meet with all the characters of active over excitement of the general sensibility, and of the most energetic concentration of psychical intuition. It may or may not be complicated with the errors of the individual, and generally borrows some traits from the affective sentiments. If it reconciles itself sometimes with marked intellectual ability, it ordinarily has for a starting point some special predisposition, which is less properly called a religious character than a vague and uncertain religiousness.

The same acute though not always reliable thinker proceeds to recognize a special cause of Fanatico-Mania, arising from the distress of mind provoked by the reading of mystical works, or of the wilder class of forced prophetic interpretations, forming in this way the first step towards the incubation of the disease. Sometimes also as a consequence of the impression of depressing causes, the individual draws the resistance, which he makes to the circumstances in which he may be placed, from misplaced fanatical assumption; (*e. g.* that of spirit-rapping,) he reacts strongly against his own grief or disappointment on this false basis, and active over-excitement is the result. Fear and remorse, when acted against by the same loose motives, lead to the same consequence. Fanatico-mania is frequently connected with either organic or dynamic affections of the chest or abdominal viscera. If there are among such patients any examples of longevity, it is when the anæsthetic ecstasy is reproduced only at long intervals. The system with difficulty accommodates itself to this convulsive spasm, and above all to the fastings and mortifications which are its habitual consequence; and a proper maintenance of the vital forces rarely resulting. The anomalies of sensation are greatly multiplied, and the impressions received, apart from the period of ecstasy, are much more durable. It is especially amongst these monomaniaes that perversions of the affective feelings are observable. The *real* and the *morbid* religious feeling may be in fact distinguished from each other by the test of selfishness. The man who yields to the false impulse has neither family nor country; provided that he gains his salvation, the rest is of but little importance. If he wishes to control others, it is more through intolerance than charity. Under

“IV. To neglect or delay such an encouragement of the religious sentiment, from any apprehension of developing a tendency to “cerebral disease,” is as unphilosophical and fatal, as it would be to withhold all food from a child through fear of strangling it, or destroying its digestive organs.

“V. The due apprehension and influence of religious truth, as revealed in the scriptures, constitutes the best preservative against mental aberrations—especially such as are supposed to originate in moral causes.

“VI. The earlier the mind is brought under the supreme influence of religious truth, the more likely it is to retain its integrity, when the exciting occasions of derangement occur.”(n)

An additional illustration of the truth of these positions is to be found in the late development of Spirit-Rapping. Precisely to the degree in which the alleged Spiritual developments depart from the dogmas of Christian Revelation, are they associated with mental derangement. As long as the “media” profess to be orthodox, so long do they keep within the bounds of right reason. With them, however, as with the Mormons, deviations from the *moral* law keep pace with deviations from the divine. Thus the cases of “spiritual marriages,” of which we have lately heard, have been preceded by alleged supernatural communications, vacating the Scriptural precepts. And a careful examination of the cases of insanity produced by Spiritualism shows that in each instance, *infidelity* became a concomitant.(o)

§ 219. Crimes committed under the influences of fanatical impulses, such as those which have been just mentioned, may be considered in the same light as crimes committed in a state of drunkenness. In the latter case, an individual who knowingly takes intoxicating liquor, cannot defend himself on the fact of guilt by proof of his intoxication. It is otherwise, however, when the guilty act is the immediate result of *mania-a-potu*, in which case the malady has assumed the shape of a substantive and permanent desire, and like any other delirium, is to be treated as destroying responsibility.(oo) In like manner, the voluntary adoption of a religious belief which includes among its incidents a known violation of law, does not relieve the party who commits such violation of law under such influences, from responsibility. If, however, he sink into consequential delirium, and then commit the crime, he is irresponsible.(p)

the influence of this excitement, the voice of nature is not heard, and history bears witness to the crimes which fanaticism has been led to commit. Every affection, every duty is sacrificed to this exclusive sentiment; and whilst a well understood religion enjoins love to God and our neighbor, blind fanaticism produces selfishness.” See Renaudin sur l’Alienation Mentale. Paris, 1854, chap. x. p. 744.

(n) Ibid.

(o) See on this topic a most able but, in some respects, eccentric Volume, under the title, “The Apocatastasis, or progress backwards, a ‘new tract for the times.’ Burlington, Chauncey Goodrich, 1854,” to which the reader is referred for a very effective exhibition of the absurdity of the whole Spirit-rapping system.

(oo) See *ante*, § 62-70.

(p) See an essay on this point, 3 Am. Jour. of Insan. 166.—See also for a report of Thom’s case, Ibid. 170.

(9.) *Politico-Mania.*(*q*)

§ 220. "Psychical infection," to use the expressive term of Ellinger, is peculiarly operative in political relations. Attempts at insurrections, acts of lawlessness against government, murderous assaults upon public officers, become at times epidemic. Marc illustrates this by the cases in which public conspicuous crimes have become contagious; *e. g.*, arson and murder. The tendency to seditious violence is generated by an oppressive government bearing on temperaments tainted with just such an infection.

§ 221. "Certain forms of government," says Dr. Rush, "predispose to madness. They are those in which the people possess a just and exquisite sense of liberty, and of the evils of arbitrary power against which complaints are stifled by a military force. The conflicting tides of the public passions, by their operations upon the understanding, become in these cases a cause of derangement. The assassination of tyrants and their instruments of oppression is generally the effect of this disease. That madness is thus induced, I infer from its occurring so rarely from a political cause in the United States. I have known but one instance of it, and that was of a gentleman who had been deranged some years before, from debt contracted by extravagant living. In a government where all the power of a country is representative and elective, a day of general suffrage, and free presses, serve, like chimneys in a house, to conduct from the individual and public mind all the discontent, vexation, and resentment which have been generated in the passions by real or supposed evils, and thus to prevent the understanding being injured by them. In despotic countries, where the public passions are torpid, and where life and property are secured only by the extinction of the domestic affections, madness is a rare disease. Of the truth of this remark, I have been satisfied by Mr. Stewart, the pedestrian traveller, who spent some time in Turkey, also by Dr. Scott, who accompanied Lord M'Cartney in his embassy to China, and by Mr. Joseph Rexas, a native of Mexico, who passed nearly forty years of his life among the civilized but depressed natives of that country. Dr. Scott informed me that he heard of but a single instance of madness in China, and that was in a merchant who had suddenly lost £100,000 sterling by an unsuccessful speculation in gold dust."<sup>(*r*)</sup> With regard to Mexico and China, however, recent observations show that these remarks should be greatly qualified.

## VIII. MENTAL UNSOUNDNESS AS ACCOMPANIED WITH INTELLECTUAL PROSTRATION.

1st. *Idiocy.*(*s*)

§ 222. "Idiocy," says Dr. Ray, "is that condition of mind in which

(*q*) See on this point "Influence des Evénemens et des Commotion Politiques sur le Développement de la Folie. Par le Docteur Belhomme. Paris, 1849;" and a review of the same in Jour. Psych. Med., Vol. III. p. 31.

(*r*) Rush on the Mind, pp. 66, 67.

(*s*) Kraemer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 110, 125. Siebold, Lehrbuch der Gericht. Med. Berlin, 1847, § 200.

See on this point the following works: The Principles of Medical Psychology, being



the reflective, and all or a part of the affective powers, are either entirely wanting, or are manifested to the slightest possible extent.”(t) The intellectual and moral faculties, in cases properly falling under this head, are almost null, the effect being in most instances congenital, and arising in all cases from want of development, not from perversion of the functions. And the development of the senses is almost equally defective.(u) The power of speech does not exist, or exists only so far as to enable the patient to articulate a few unintelligible monosyllables. This incapacity depends sometimes on the imperfect conformation of the organs of speaking, sometimes upon those of hearing, but more frequently on a deficiency in or want of the powers of imitation; so that even when the hearing and the speech are both entirely mature, the patient remains unable to do more than in the one case to show his knowledge of the existence of sound, and in the other, to give utterance to noises not above, if equal to, those of the brute creation. Taste and smell are equally imperfect. In many cases there is an inability to perceive odors, and in most, nothing but the coarsest discrimination in the selection of articles of food. Wallowing in personal filth, devouring even excrement with apparent avidity, indisposition to eat at all unless food be placed directly before the eye, drinking urine with as little appearance of distaste as water, are incidents one or more of which are to be found in almost every case of idiocy. And the same low grade of sensibility and of flexibility is found in the purely physical system. The nerves are almost torpid. Limbs sometimes have been amputated without apparent pain, and Esquirol even tells us of labor having been undergone without the patient being conscious of the fact or of its meaning. The arms are frequently of unequal length, and misshapen; and the limbs generally are crooked and feeble. A careless and broken gait distinguishes them in most cases. Even the eyes are defectively hung, and seem incapable of poising themselves at a right level. And in the lower class of cases there is sometimes so great a defectiveness of vision as to prevent the patient from perceiving the most obvious objects. And even when the powers of vision and of motion exist, the intellectual powers are sometimes so attenuated as to make attempts to reach a desired point, entirely abortive, though there be entire muscular power for such a purpose.

§ 223. While, however, the reasoning powers are almost entirely defective, there is sometimes a perceptible, though unequal, development of the moral sentiments. Self-esteem,(v) love of approbation, religious awe, sometimes assume a supremacy over the system, which is the more marked because it is checked by no countervailing qualities. Dr. Rush tells us of an idiot who spent his life in little acts of benevolence to others, though in the dispensation of them, as well as in all other points in his life, he showed no reasoning powers whatever. Re-

the outlines of a course of lectures by Baron von Feuchtersleben, M. D. Vienne, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by G. B. Babington, M. D., F. R. S., &c. London. Printed for the Sydenham Society, 1847: p. 354. Morel, sur les Maladies Mentales, Vol. I. p. 52. Paris, 1822.

And see a very remarkable report by Samuel Kneeland, Jun., M. D., read before the Boston Soc. for Med. Improvement, Jan. 13, 1851; Am. Jour. of Med. Science, 1851; and a review of the same Journal of Psychological Med., Vol. IV. p. 366.

(t) Ray, § 51.

(u) Esquirol, 466.

(v) Ray, § 53.

ligious veneration and awe is sometimes developed to an exaggerated degree, expended upon the most unnatural objects. Vanity,—such as that which distinguishes some branches of the brute creation,—finds with them a pregnant place. And Esquirol gives us numerous instances in which the talent for thieving, and that to a very remarkable extent, was found associated with entire vacuity of mind in all other relations. The same observation applies, though in a much less marked extent, to the sexual propensities.

§ 224. The following useful classification of these beings is made by Mr. S. G. Howe :

“IDIOTS of the lowest class are mere organisms, masses of flesh and bone in human shape, in which the brain and nervous system have no command over the system of voluntary muscles ; and which consequently are without power of locomotion, without speech, without any manifestation of intellectual or affective faculties.

“FOOLS are a higher class of idiots, in whom the brain and nervous system are so far developed as to give partial command of the voluntary muscles ; who have consequently considerable power of locomotion and animal action ; partial development of the intellectual and affective faculties, but only the faintest glimmer of reason, and very imperfect speech.

“SIMPLETONS are the highest class of idiots, in whom the harmony between the nervous and muscular systems is nearly perfect ; who, consequently, have normal powers of locomotion and animal action ; considerable activity of the perceptive and affective faculties, and reason enough for their simple individual guidance, but not enough for their social relations.”(w)

§ 225. It does not take the case out of the definition of Idiocy, that some particular faculty has been saved from the general wreck. This is often the case, particularly with music. Thus there is at present in the Saltpetriere a girl idiotic to an extreme degree, who does not speak, and cannot even dress herself. However, her keeper has recently discovered in her a decided taste for music. She often can repeat faithfully a whole passage of music played or sung to her only once ; even if the passage is left incomplete, in repeating it she will terminate it in the right key and tone. A first rate performer on the piano was brought to play to her, and her transports amounted almost to frenzy. At certain passages of rapid transitions from flats to sharps, she uttered cries of transport, and commenced biting her fingers to calm her emotions. She is an immense eater, and greedily snatches at fruit ; but the moment she hears the instrument, she stops until the music has ceased.

Mr. Howe mentions an idiot, who had an astonishing power of reckoning. “Tell him your age, and he will, in a very short time, give you the number of minutes.”

§ 226. The following statement by Esquirol will throw much light on this phase of mental unsoundness : “With each case of idiocy which I have published in this Chapter, I have also given the admeasurements

(w) Second Report of the Legislature of Massachusetts, by the Commissioners appointed to inquire into the condition of Idiots within the Commonwealth. By S. G. Howe, pp. 147. Boston, 1848. Senate Doc.

of the head taken during life. By bringing them together we may compare the means with the results obtained by my young confreres; time will not permit me to do it. For those who are fond of those kind of investigations, I subjoin a table of the mean results of admeasurement of the head taken from a woman in the enjoyment of good health, and from plaster casts taken after their death, in the case of thirty-six insane women, seventeen imbeciles and seventeen idiots. In the case of three idiots, whose heads were very small, the admeasurements were taken from the erania.

TABLE OF CRANIAL ADMEASUREMENTS.

	Circumference.	Antero-posterior curvature.	Antero-posterior diameter.	Traverse diameter.	Totals.
Women in a state of health,	21.87 in.	13.30 in.	6.98 in.	5.29 in.	47.44 in.
Insane,	20.82	11.50	6.96	5.67	44.95
Imbeciles,	20.19	11.49	6.69	5.63	44.
Idiots,	19.92	11.26	6.85	5.39	43.42
Idiots. Microcephalous,	15.07	7.51	4.88	4.17	31.63

From this table we learn: 1st. That the circumference of the head, according to admeasurements taken among women, enjoying the use of their reason; from insane women, imbeciles and idiots; diminishes in an almost equal proportion from the women in the enjoyment of usual health, to the idiot, deprived even of instinct. 2d. That the fronto-occipital curvature diminishes in a remarkable degree from the women in sound mind, to the insane female: whilst no variation is noticed in the insane person to the imbecile, and a difference of but six millemetres between the latter and idioey. 3d. That the fronto-occipital diameter is the same in the case of the women enjoying the use of their reason and the insane women; and that there is a diminution of but six millemetres between the insane person and the idiot; while the difference is enormous on passing to the lowest degree of idioey. 4th. That the bi-temporal diameter is more considerable in the case of the insane women and even the imbecile and idiot, than in that of a woman possessing the ordinary degree of intelligence. 5th. That if we suppose that the sum of those four admeasurements, express the volume of the brain; it follows that the volume of this organ, diminishing in the same proportion with the intellectual capacity; that of the eranium would be the expression of this capacity.”(x)

§ 227. “In that remarkable obliteration of the mental faculties,” says Abererombie, “which we call idioey, fatuity or dementia, there is none of the distortion of insanity. It is a simple torpor of the faculties in the higher degrees, amounting to total insensibility to every impression; and some remarkable facts are connected with the manner in which it arises without bodily disease. A man mentioned by Dr. Rush was so violently affected by some losses in trade, that he was

(x) Esquirol on Insan. Lea & Blanch. Phila., 1845. p. 473.

deprived almost instantly of all his mental faculties. He did not take notice of any thing, not even expressing a desire for food, but merely taking it when it was put into his mouth. A servant dressed him in the morning, and conducted him to a seat in the parlor, where he remained the whole day, with his body bent forward and his eyes fixed on the floor. In this state he continued nearly five years, and then recovered completely and rather suddenly. The account which he afterwards gave of his condition during that period was, that his mind was entirely lost; and that it was only about two months before his final recovery that he began to have sensations and thoughts of any kind. These at first served only to convey fears and apprehensions, especially in the night-time. Of perfect idiocy produced in the same manner by a moral cause, an affecting example as given by Pinel: Two young men, brothers, were carried off by the conscription, and in the first action in which they were engaged, one of them was shot dead by the side of the other. The survivor was instantly struck with perfect idiocy. He was taken home, where another brother was so affected by the sight of him, that he was seized in the same manner; and in this state of perfect idiocy they were both received into the Bicêtre. I have formerly referred to various examples of this condition supervening on bodily disease. In some of them the affection was permanent; in others it was entirely recovered from.”(x)

(x) Abercrombie on the Intellectual powers, pp. 273, 274. As the different races of men, says M. Renaudin, have a characteristic physiognomy, and as individuals reflect in their features the most salient points of their moral idiosyncrasy, so the idiot in this respect presents a peculiar stamp, which the least discerning can recognize. It is a type which can be distinguished in all its varieties, even when the external conformation of the head does not differ much from the normal proportions. But that which strikes us most in this class, is the want of symmetry, not only in the encephalic organ, but also in the other parts of the body, and if sometimes the physiognomy is deceitful in this respect, the other parts of the organism soon reveal to us the want of co-operation indispensable to the complete development of man. It is rather by an observation of the whole constitution than of its separate parts, that the essential characters of this infirmity are to be detected. Idiots, generally, deceive in their age, which always offers at the different periods of their existence a ridiculous admixture of decrepitude and puerility. The hypertrophy of certain glands, the flaccidity of the tissues, malformation of external essential organs, absence of all proportion in the length of their limbs, difficulty and uncertainty in their movements which are almost convulsive, the retraction of certain tendons, an arrest of development in the figure and in muscular contractility;—such are the general appearance that characterize the idiot in his external conformation. His mode of living is in keeping with this degradation of forms, and furnishes us with the means of perceiving some of the relations existing between the physical and the moral. His language is scarcely rudimentary. He does not think, has nothing to say, and nothing in him calls for the vocal motion. When, however, this *mutism* is not idiopathic, he can be made to articulate certain words, and his movements can be placed under some moral control; but in undergoing this external influence, he still rests faithful to that automatism which is his principal characteristic. It is always a material and instinctive impulse that controls. The idiot shows, in the satisfying of his wants, a brutality in close connection with the irregularity of all his actions, and the want of balance of his functions which all coincide with personal instinct. He yields himself to onanism with a revolting cynicism; he eats with a voracity that defies everything, and which proves how obtuse his sensibility is, although he in fact suffers more than any other the unhappy effects of climacteric changes. Finally, in spite of the violence of certain appetites, the functions are so incompletely performed, that we must not be surprised to see these unfortunates very short-lived. If on the one hand nothing has wasted life, nothing on the other hand has vivified it, and one can easily conceive that it is extinguished, since it is without essential nourishment and without object.

The psychical element plays no part in such an organization. External influence is

§ 228. Cretinism finds no place in the United States, and cannot, therefore, claim here extended consideration.(y)

2d. *Imbecility.*(z)

§ 229. *Imbecility* has perhaps as many degrees as it has victims, and yet it becomes the task of psycho-forensic medicine to assign a line of demarcation within which the judge is to declare the responsibility of the agent to cease to exist. But this problem is only so far capable of solution as we are enabled to detect and recognize the existence of imbecility in general, and to estimate its relation to a given action; the personal discretion of the tribunal must always have considerable scope in all cases near the boundary line. In order to obtain as firm a common ground as possible, it becomes advisable to subdivide and classify imbecility, particularly where it depends upon particular diseased con-

unable to develop it, since the somatic element is not in a condition to receive it; and as to spontaneousness, one can but with difficulty perceive the germ. So, when these degraded beings, impelled by a brutal instinct, or obeying another's will whose instrument they are, commit a culpable act, all the world agree in not imputing to them any moral responsibility. (See *Études psychologiques sur l'Aliénation Mentale*, per L. F. E. Renaudin, p. 170. Paris, 1854.)

Idiocy, says M. Falret, cannot, strictly speaking, figure amongst the forms of insanity. In this degraded state, man is fallen below the brute; he does not even possess the instinct of self-preservation. It is necessary for charity not only to bring him the food required for his nourishment, but to place it in his mouth, and to protect him against the mischievous influences which surround him, and against all destructive causes. Instead of language, the exclusive appendage of man, since it is the expression of thought in all its development, the complete idiot only utters certain harsh, savage inarticulate sounds. Instead of that firm, assured step which executes the exact command of the will, the rough, disorderly movements of idiots seem only phenomena of irritability. Besides, they are often immovable, bent down towards the ground, and only execute a kind of rocking movement, balancing forward and backward, to the right and to the left. Without doubt this is the extreme degree of idiocy, for there are idiots less degraded in their organization, and consequently in their manifestations; but unfortunately to this feeble development of the intelligence is too often joined either an absolute want of character, or low tastes, incitations to a brutal lasciviousness, to robbery, pyromania and ferocity, which they turn against themselves and against inanimate objects. (See *Leçons Cliniques*, de M. Falret, p. 243. Paris, 1854.)

(y) The student, however, who seeks for particular information as to its character, is referred to the following treatises: *Études des Maladies Mentales*, de M. Morel. Tome I. p. 64. Paris, 1854. *Gedanken über Kropf und Cretinismus als Beitrag zur Homatologie und Homonymie*. Von Joh. Mich. Huber, Gerichtlichswundarzt zu Ried in Tyrol. Mit einer Abbildung. (Medicin. Jahr. des k. k. österr. Staats, Mai.) Ueber den Cretinismus in Canton Waadt in der Schweiz. von Dr. H. Lebert, prakt. Arzt zu Paris. (Archiv für physiologische Heilkunde VII. B. 6 Heft.) Notice of a remarkable disease analogous to Cretinism. By Hugh Norris; *Med. Times*, Jan. 1848. *Les goiteux et les cretins de la Savoie*; *Annales de Therapeutique*, 1848. Mais, Ueber den Cretinismus in grossen Städten und dessen Aenlichkeit mit dem in den Alpen. Von Dr. Behrend. (*Gaz. des hôpitaux*, 1848. Nos. 6 and 7.) Cretinismus als genetisch—contagiose Endemie in Neudenu, &c. Bad. *Annalen d. Staats-Arzneikunde*, 1846. Esquirol, *Mental Maladies*, &c., 481-2. Sonsburg, ueber deu Cretinismus. *Wurzb.*, 1825. Häufiger, ueber die Beziehung des Sexualsystems zur Psyche ueberhaupt und zum Cretinismus ins besondere. *Wurzb.*, 1826. See also a very valuable report on this point, by Samuel Kneeland, jun., M. D., read before the Boston Soc. for Med. Improvement. Jan., 13, 1851. *Am. Jour. of Science*, 1851; and a review of the same in *Journal of Psychological Med.* Vol. IV. p. 366. See also "A Physician's Holiday, or a month in Switzerland in the summer of 1848. By John Forbes, M. D., F. R. S." London, 1848; in which the management of the Cretins is fully described.

(z) Siebold, *Lehrbuch der Gericht. Med.* Berlin, 1847. § 200. L. Krahmer, *Handbuch der Gericht. Med.* Halle; C. A. Schwetschke, 1851. § 125. *Études Cliniques des Maladies Mentales*, par M. Morel. Tome I. p. 39. Paris, 1854.

ditions capable of ascertainment and distinction. In this respect we distinguish, in the first place, *imbecility with*, and *imbecility without concomitant insanity*.

§ 230. *Imbecility with concomitant insanity* presents the following subdivisions:

1. The original imbecility which has lapsed into unsoundness of mind. The nature of the latter will determine in the first instance, in how far the patient is amenable to the penal laws in a given case; but the fact of imbecility will always favor the psychological arguments in favor of irresponsibility.

2. Imbecility supervenes upon the course of a mental disorder, and manifests itself particularly in the form of a failure of memory. The question of responsibility will depend in this case, upon the same principles as stated in the last preceding head.

3. *Specious imbecility*, as in the case of *melancholia attonita*, and as such will receive but little attention at the hands of the forensic physician.

4. *Imbecility with confusion of mind*. This is found side by side with a failure of memory, and a more or less conspicuous incoherence and inconsistency of the perceptions, and a certain agility and activity of the super-physical life. It is either a primary or secondary form, and in the *former* case it may be consequent upon severe diseases of the brain, epilepsy, intemperance, sexual excesses, and senility; in the *latter* case it may arise from the various forms of mental unsoundness, and may be considered as always excluding the idea of moral responsibility.

5. Imbecility remaining after the patient has recovered from an attack of insanity. It will never contain a sufficient reason for suspending the responsibility of the agent, but may often deserve the attentive consideration of the judge in the moulding of the sentence. (a)

(a) In some circumstances, says M. Renaudin, the idiotic germ is less prominent, nothing tends to reveal it in infancy, and the early years lead us to expect a normal ulterior development. But it may happen that a severe disease, deeply affecting the organism, supervenes, or the subject may have been submitted to an intellectual labor above his powers, and at a given moment an arrest of development, as much in the physical as in the moral system, shows itself. This condition sometimes supervenes even without the action of any apparent cause and then we can only attribute it to the influence of this idiotic principle. Instead of pursuing the course marked out by the laws of nature, it is arrested at a point of development, rarely transitory but most generally permanent, which is known every where under the name of imbecility. The physical organization in imbeciles offers less abnormalities than that of idiots; the body is straighter and if the physiognomy is less repulsive and shows a little more regularity in its features, it exhibits but little animation. The feelings are seen in their rudimentary state in this class of beings; they are susceptible of a more advanced education and when they belong to a family of easy circumstances, they can be made to submit themselves to the habits of a regular life. The impressions they receive are sufficiently durable, providing they do not overstep a sufficiently restricted limit. They are susceptible of a certain amount of memory, which in some cases reaches a very remarkable height. Sometimes the ideas they acquire are very limited and their intellectual spontaneity is on a footing with the small development of their physical spontaneity. Although less stupid than the idiot, automatism is the characteristic trait of the imbecile. He never gives the impulse, he receives it; and it is amongst the imbeciles that an asylum especially finds valuable aids in its internal service. If the affective sentiments are but feeble, the instinct of the feeling of personality shows itself perhaps in an absurd vanity, or in a savage egotism in the satisfaction of wants whose stimulus is ordinarily very energetic. Hence an excessive irritability that readily degenerates into mania, or a malicious cun-

§ 231. *Imbecility without insanity* has several gradations, all being separate denominations; the highest degree is called *idiocy*. Next to this is *imbecility* proper; *dullness*, *feebleness*, *stupidity*, are inferior grades of a stunted growth of mind. The reasons which, in the higher stages, exclude understanding and self-control are the more potent, as no education has been imparted here, or, if imparted, has produced no effect. The lower stages do not justify the physician in casting a doubt upon the existence of legal responsibility. They are for the consideration of the judge alone, and are interesting in this point of view, because simpletons and fools often have a touch of malice, brutality, ill-will, and mischief in their dispositions, and may be led, by teasing and ill-treatment, to vindictive hatred, revenge, and violent outbursts of anger.

§ 232. The Emperor Napoleon hits upon a very happy illustration of the distinction between two of the above mentioned phases. In one of his conversations with Las Casas, he said that there was such a thing as "*folie innocente*," and "*folie terrible*,"—a fatuous state which is safe, and one which is dangerous. A fatuous person "*un fou*," of the first kind, the Emperor describes as reasoning with the proprietor of a vineyard in which he was trespassing, thus: "Why, here are we two: the sun sees us both; therefore, I have a right to eat grapes." The "*fou terrible*," he proceeds, "is he who cuts off the head of a man whom he found sleeping under a hedge; then hid himself behind it, in order to witness the surprise—*embarras*—of the body when waking."

"Of these half-witted persons," remarks Dr. Mayo, "the former indulges a love of grapes, the latter a love of bloodshed: the process of thought in each case is that of a *deficient* understanding, which could neither prevent the one from stealing grapes, nor the other from committing violence under the influence of opportunity, but rather forwarded the crime by suggesting excuses." "An idiot," says Dr. Hainsdorff, "in the Hospital of Salzburg, appearing to be singularly insusceptible of fear, an experiment of an appalling character, and of appalling consequences, was made upon him, as a means of putting his susceptibility to the test. It was proposed to make the impression upon him that he saw a dead man come to life. A person accordingly laid himself out as a corpse, enveloped in a shroud; and the idiot was ordered to watch over the dead body. The idiot perceiving some motion in the corpse, desired it to lie still; but the pretended corpse raising itself, in spite of this admonition, the idiot seized a hatchet, which unluckily was within his reach, and cut off first one of the feet of the unfortunate counterfeit, and then, unmoved by his cries, cut off his head. He then calmly resumed his station by the real corpse;—a

ning, in order to obtain the thing coveted. The imbecile has but few ideas; and as he knows but little abandons himself to his impulses when fear does not control him. But little capable of distinguishing between good and evil, he may be a dangerous instrument in criminal hands. The imbecile commits a murder with coolness, shows often a great depravity of tastes, and it is only an exception, if you can perceive in him any rudimentary traces of the moral sense. It is at this point that his intellectual aptitude ceases, and we can easily understand how a like condition necessarily excludes all responsibility.—*Renaudin sur l'Alienation Mentale*. p. 173. Paris, 1854.

strong illustration of the dangerous hypothesis of harmlessness as connected with this state of mind.”(b)

§ 233. “Dr. Rush says,” we quote from Dr. Ray, “that in the course of his life he has been consulted in three cases of moral imbecility; and nothing can better express the true character of their physiology, than his remark respecting them. ‘In all these cases,’ he observes, ‘there is probably an original defective organization in those parts of the body which are occupied by the moral faculties of the mind,’—an explanation which will receive but little countenance in any age that derives its ideas of the mental phenomena from the exclusive observation of mind in a state of acknowledged health and vigor. To understand these cases properly, requires a knowledge of our moral and intellectual constitution, to be obtained only by a practical acquaintance with the innumerable phases of the mind, as presented in its various degrees of strength and weakness, of health and disease, amid all its transitions from brutish idiocy to the most commanding intellect.’”(c)

(b) Mayo on Medical Testimony in Lunacy, pp. 93, 94.

(c) Ray on Insanity, p. 90.

In a course of clinical lessons delivered at Bicêtre, M. Ferrus gives an account of the different intellectual debilities in a way that throws a strong light upon these difficult questions:

Between idiocy and dementia, he says, there is a most striking analogy. In both cases, human intelligence is abolished; it no longer possesses the means of perfectibility. But the analogy ceases in examining the producing causes. With the idiot, deprivation of reason is congenital; the demented, on the contrary, arrives progressively at the total loss of his faculties. Dementia is the abolition of the intellectual faculties, both moral and instinctive, supervening after the period of puberty: it is a kind of debility which appears either in an insensible manner or with the rapidity of lightning,—breaking, more or less, all the connections which unite the man with the rest of the world.

The characters of dementia are sufficiently decided, so as not to be confounded with those of other mental affections. In idiocy, the faculties of the mind have never existed, or have been destroyed before their complete development. In dementia, you may still possibly see some traces of an intelligent past; but it betrays in vain its past perfection: it is stamped forever with the seal of feebleness and nullity, and destined to be extinguished by a kind of exhaustion of nervous influence.

Stupidity consists in an accidental, sudden, complete abolition of the intellectual, moral and instinctive faculties, as well as of the movements. It has for its cause a sudden and violent physical or moral shock: it is distinguished from dementia by the rapidity of its appearance, the intensity of its symptoms, their frequent remission and exacerbation, and especially by the possibility of a complete cure.—Ferrus, *leçons cliniques faites à Bicêtre*.

Dementia, says Esquirol, is characterized by the enfeeblement of the sensibility, intelligence, and will. Incoherence of ideas; want of intellectual and moral spontaneity, are the signs of this affection. The man suffering from dementia has not the faculty of properly receiving objects, of noticing their relations and comparing them, of preserving a complete remembrance of them; whence results an impossibility of reasoning correctly. In dementia, he adds, the impressions are too feeble; it may be because the sensibility of the organs, or of the sensations, is weakened; or it may be because the brain itself has not sufficient power to perceive and retain the impression that is transmitted to it. From this it necessarily results that the sensations are languid, obscure, and incomplete. Individuals in dementia are not susceptible of a sufficiently strong attention,—objects only strike them in an obscure and false manner: they can neither compare nor associate ideas, nor abstract them; the organ of thought has not sufficient energy,—it is deprived of the tonic force necessary to the integrity of its functions. Then the most incongruous ideas succeed each other, following each other without connection and without motive: the matter is incoherent; the patient repeats words and entire phrases without attaching to them distinct sense; he speaks, as he reasons, without any consciousness of what he is saying.—(Esquirol de la demence, p. 221.) The demented, in spite of the general decrepitude of his organic functions, is not freed from the laws of



3d. *Dementia.*(d)

§ 234. "This form of Insanity," says Dr. Ray, "is attended by a general enfeeblement of the moral and intellectual faculties, which were originally sound and well developed, in consequence of age or disease, and is characterized by forgetfulness of the past, indifference to the present or future, and a certain childishness of disposition. The apparent similarity of this state to that of imbecility or idiocy, renders it necessary that they should be accurately distinguished; for nothing could be more improper or unjust than to view them merely as different shades of the same mental condition. Idiocy and the higher degrees of imbecility are congenital, or nearly so, and consist in a destitution of powers that were never possessed."(e)

"Dementia," continues the same high authority, "is distinguished from general mania, the only other affection with which it is liable to be confounded, by characters that cannot mislead the least practiced ob-

action and reaction. There are periods in his existence when the old phenomena of possession appear to be renewed. When he is agitated, he cries and tears his clothes, and may, perhaps, perform some dangerous actions. The hallucinations are often sufficiently intense to provoke veritable attacks of fury; but this rage lasts but a little while; it is appeased like the anger of a child.

The demented from this excited state falls back into his ordinary automatonism. He has no more any wishes, hate, or tenderness; he holds the objects formerly so dear to him, in the greatest indifference; he sees his relations and friends without pleasure, and leaves them without regret. He is not disquieted by any privations imposed on him; and pleasures obtained for him gratify him but little. What goes on around him does not affect him. The events of life are as nothing to him, since he is unable to attach any remembrance, any hope to them: indifferent to every thing, nothing gratifies him. He laughs and plays whilst other men are afflicted, and weeps when all the world is satisfied. If his position discontents him, he does nothing to change it. His determinations are vague and uncertain: he is a perfect automaton, that has not sufficient energy to be ungovernable: his isolation is the more necessary, as he yields himself to acts which are the result of the abolition of conscience, and as he becomes but too often the sport and the victim of those who wish to take advantage of his condition.—See Morel sur les Maladies Mentales, Tome I. p. 402. Paris, 1852.

Dementia, according to Falret, is a period, and not a true form of mental unsoundness. Amongst the demented, who are only the chronic insane arrived at an advanced stage of the disease, there are some who are agitated like maniacs, and some who remain motionless, like hypomaniacs. There are others in whom are seen some predominant ideas,—resembling, in this respect, monomaniacs; but it is difficult to classify them. If they speak, their unconnected words have no relation, and convey no sense; often even this is not due to incoherence alone, but to the absence of ideas: it is a flow of words without thoughts.

If they remain quiet and silent, their countenances express neither concentration or passion, but dullness and stupidity; they seem, at least in extreme cases, to be ciphers both in understanding and character. The observer, in fact, sees in them only ruins: he sees before him all the moral and intellectual elements in an almost complete state of isolation from one another. This separation is a kind of dissolution which betrays the radical blow that has been inflicted upon the psychical forces, and destroys all hope of ever seeing these elements united and coördinate. If sometimes a gleam of intelligence sparkles in this chaos, and in the midst of these ruins,—far from consoling, it adds to the gloom, so manifest is it that the patient himself is neither its author nor its witness. Every thing, in fact, in dementia, betrays an inability to form ideas, to experience sentiments, to possess a will. It is the tomb of reason, with the exception of some flashes that mark it, and which are, as it were, the reflections of the ancient brilliancy of the mind.—See *Études cliniques sur l'Aliénation Mentale*, par M. Falret, p. 242. Paris, 1854.

(d) L. Kraheer, *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851 § 125; Siebold—*Lehrbuch der Gericht. Med.* Berlin, 1847, § 200; and also see *post*, § 233, n (c.)

(e) Ray on Insanity, p. 291.

server. The latter arises from an exaltation of vital power, from a morbid excess of activity, by which the cerebral functions are not only changed from their healthy condition, but are performed with unusual force and rapidity. The maniac is irrational from an inability to discern the ordinary characters and relations of things, amid the mass of ideas that crowd upon his mind in mingled confusion; while in dementia, the reasoning faculty is impaired by a loss of its ordinary strength, whereby it not only mistakes the nature of things, but is unable, from want of power, to rise to the contemplation of general truths. The reasoning of the maniac does not so much fail in the force and logic of its arguments, as in the incorrectness of its assumptions; but in dementia the attempt to reason is prevented by the paucity of ideas, and that feebleness of the perceptive powers, in consequence of which they do not faithfully represent the impressions received from without.

“In mania, when the memory fails, it is because new ideas have crowded into the mind, and are mingled up and confounded with the past; in dementia the same effect is produced by an obliteration of past impressions as soon as they are made, from a want of sufficient power to retain them. In the former the mental operations are characterized by hurry and confusion; in the latter by extreme slowness and frequent apparent suspension of the thinking process. In the former, the habits and affections undergo a great change, becoming strange and inconsistent from the beginning, and the persons and things that once pleased and interested, viewed with indifference or aversion. In the latter, the moral habits and natural feelings, so far as they are manifested at all, lose none of their ordinary character. The temper may be more irritable, but the moral disposition evinces none of that perversity which characterizes mania.

“In dementia, the mind is susceptible of only feeble and transitory impressions, and manifests little reflection even upon these. They come and go without leaving any trace of their presence behind them. The intention is incapable of more than a momentary effort, one idea succeeding another with but little connection or coherence.”(f)

## IX. MENTAL UNSOUNDNESS ACCOMPANIED WITH DELIRIUM.

### 1st. *General Delirium.*

§ 235. What distinguishes delirium from the delusions of the senses is, that in the latter the sensational faculties are really acted upon, subjectively, though in an eccentric manner, while in the former the interior reproductive activity of the brain predominates in the generation of phantoms.(g) Consciousness is disturbed at the same time, and there is incoherent speaking and action, as if it were a waking dream. External objects are perceived indistinctly, or not at all, and on the whole there is the less delirium, the more activity there is in the peripheric nerves, for which reason hydrocephalic children generally relapse into delirium when they cease vomiting. The external senses may, however,

(f) Ray on Insanity, pp. 292, 293.

(g) Haygen. Vol. II. p. 707; Schürmayer, &c. § 555.

be at the same time open to perceptions, and may convey them; but the patient is so controlled by his internal dreams as to act as if they did not exist. Here there is, accordingly, a predominance of dreams, which deprives the individual of the possibility of the power of maintaining a corresponding relation with the external world. Delirium may, therefore, be defined as a state of dreams brought on, not by sleep, but by disease. Like a dream, a delirium may become active, the beginning of which is the speaking delirium. Where a crime or misdemeanor proceeds from a delirium, there is no freedom of agency, *i. e.*, the action is to be regarded as the product of a morbid state of mind.

It is judicious for forensico-medical purposes, to distinguish particularly the following forms of delirium :

§ 236. (a.) *Depressed Delirium*, which is both passive and active.

§ 237. (b.) *Maniacal delirium*, which comprises several varieties, depending upon the frame of mind by which it is accompanied. (h)

(h) The most remarkable phenomenon of mental unsoundness (we translate from Morel) is unquestionably delirium, whether it shows itself in words or deeds. Delirium, considered as an essential symptom of insanity, should possess a type of continuity, should connect itself with lesions of a special nature, and should present altogether the elements of a certain systemization of the frenzied conceptions. This systemization alone gives to the delirium which produced it, a particular stamp. It shows off what has been called the fixing of ideas, and that logic peculiar to the insane that leads them to the justification of the falsest conceptions, and the most deplorable acts. If it was otherwise, who could have flattered himself that he had escaped insanity; for we have all suffered in a more or less degree the phenomena of delirium. We are delirious during fever, under the influence of spirituous liquors, as also of some narcotics. Febrile delirium is a generic term comprising the universality of abnormal phenomena that can in a more or less permanent manner, in a given disease, hinder the association of our ideas, or that directs this association in the way of producing illusions and hallucinations of all kinds.

The word insanity is likewise a generic expression for pointing out the universality of the abnormal phenomena which, under the united influence of physical and psychological causes, can, in a more or less permanent manner, pervert our manner of feeling and seeing, or in other words, bewilder our understanding.

In this point of view, febrile delirium and the delirium of madness are the same, inasmuch as deliriums are identical; but it is excessively important not to confound the symptoms with the diseases that produced them.

An individual suffering from an acute disease approaches the period of convalescence. At the approach of night, or whenever he shuts his eyes, fantastical apparitions besiege him. He himself recognizes that these painful impressions are the results of his fever; or if he does not recognize it at the first glance, he receives the explanations of those surrounding him. He raves before sleeping, and it is not strange if he still raved under the influence of the depression as well as of exaltations of the organs of the senses. Upon awaking, he makes known to his relations and friends the fatiguing sensations that his dreams have produced, and seems to search with eagerness for explanations to reassure him. As he returns to consciousness, the motives of his judgment become more certain, the tumult of his bewildered senses is appeased, the nights are quieter, and when convalescence follows an ascending course, there only remains a vague and confused remembrance of the stormy scene through which he has passed.

Things, unfortunately, do not pass so when the delirium has a tendency to the permanent or chronic form; and it is this which makes the essential difference between properly called febrile delirium, and maniacal delirium. There may be a period when these two deliriums possess the same external characteristics on account of the similitude of the perverted sensorial phenomena; but when the phenomenon of delirium is produced by a maniacal state, it is then a situation which often passes unnoticed in the beginning, but which, as a diagnostic element, it is of the highest importance to describe.

This situation, so painful for the friends, first betrays itself in a perversion of the feelings, and in a complete change in the character and habits of the patient. He becomes impatient and fretful; speaks passionately, and in an unaccustomed tone. He often loses the feeling of modesty, whatever may be his age or education. His friends and relations attribute these disgusting phenomena to the effect of the primitive disease which shows itself with all the characteristics of an ordinary febrile delirium. But soon another

§ 238. (c) *Delirium tremens.*(i)

§ 239. (d) *Mania puerperarum*, which attacks women in child-bed, and is sometimes distinguished, in addition to a high degree of violence, by lewdness and shamelessness, and more rarely by the homicidal mania.(j)

more disgusting phenomenon shows itself, and often without enlightening them. The care bestowed upon the sick person, the marks of the liveliest affection which are shown to him are repulsed, sometimes with irony and disdain, and sometimes with passion and fury. In ordinary diseases the sick person attaches himself with happiness to every thing that tends to recall him to existence. He hears with emotion of the different stages of his disease and of the delirium which was its consequence; he speaks often of its causes, deploras its effects, and makes innumerable excuses for any malignant or obscene words which may have escaped him during the delirium. The patient, on the contrary, in whom the insanity is confirmed, will not admit that he was delirious. He sustains the errors of his imagination, and takes them for realities. The hallucinations and delusions of all sorts which he has felt, and which still beset him, fortify him in his madness. Still more, in this he systematizes his delirium, and whatever intellectual energy is left, is employed by him in establishing upon the basis of a desperate logic, motives for the new existence which he is just commencing. Several authors, basing themselves on the fact that the delirium of insanity is often found unaccompanied by fever, (delirium sine febre,) have thought that the train of physiological phenomena that accompanies the delirium of acute diseases, is sufficient to mark out the difference between these primitive conditions. This appreciation, though very true on one side, may nevertheless lead us into error. We willingly admit that the delirium of acute diseases is accompanied with redness of the cheeks and turgidity of the face. The expression is troubled, and there are marked changes in the circulation. The eyes are brilliant, respiration often painful, and the excretions involuntary; the language takes an unaccustomed accentuation. The sick person expresses himself sometimes with vivacity; sometimes with great slowness; his sentences and his words are badly articulated; he speaks sometimes to himself, and at other times deep drawn sighs are the only manifestations of his soul. But these phenomena are also to be met with in the delirium of insanity, and especially in the first stages of this disease. See *Etudes Cliniques des Maladies Mentales*, &c. M. Morel. Tome I. p. 124. Paris, 1852.

(i) L. Krahrmer *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851. § 116. See also 7 *Am. Jour. of Ins.* 364. See as to responsibility of persons so affected, *ante*, § 36-38.

Privation of stimulants, says Morel, and the employment of opiates, generally suffice to restore reason to those persons who are generally not considered as insane unless afflicted with a special affection known by the name of *dypsomania*; even when the fatal consequences resulting from the abuse of spirits impress upon the delirium, which is its consequence, a form of continuity which has by some authors been pointed out under the name of *drunken madness*. Errors made in this respect may be productive of grave consequences for those who are the victims of them. The following is an example:

In the month of May, 1850, there was brought to the asylum of Moreville, a sick person, whom a physician's certificate represented as a dangerous madman. We observed at first in him a very great disorder of ideas, and a peculiar difficulty of expressing himself. The face was pale, and the lips agitated with convulsive movements, and there was a general trembling of the limbs. The employment of opiates and a bath soon removed these appearances, and the next day we had a man in the perfect possession of his faculties before us. The error in this case had arisen from the fact, that the physician's certificate had been given without a proper examination of all the causes necessary to a correct judgment. If he had, indeed, gone back to the appreciation of the causes, he would have found out that very grave dissensions existed between two brothers, of whom one was this pretended madman, who, endowed with a violent but feeble character, after having yielded in the strife of discussion, ordinarily sought to console himself in alcoholic libations. It was after having swallowed a too abundant ration that a family quarrel brought its contingent of trouble to the natural excitement that controlled him, and resulted in *delirium tremens*, which, if it had been better appreciated in its origin and effects, would not have brought this person to an insane asylum, and compromised in a certain degree his social position. Morel sur les *Maladies Mentales*. Tome I. p. 146. Paris, 1852.

(j) "A homicidal propensity," as we are told by Dr. Taylor, "towards their offspring, sometimes manifests itself in women soon after parturition. It seldom appears before the third day, often not for a fortnight, and in some instances not until several weeks after delivery. The most frequent period is at or about the commencement of lactation, and between that and the cessation of the lochia. According to Esquirol, it is generally

2d. *Partial.*

§ 240. This head may be considered as including *Furor transitorius*, *mania transitoria*, *transitory ravings*.(k) By this, says Schürmayer,(l) is understood an attack of frenzy, fury and raving madness, accompanied with more or less confusion of the senses, and of the thinking faculties, and peripheric consciousness, which arises without any perceptible, or from a very slight external provocation, generally lasts but a short time, hardly a few hours, and after sometimes leading to the most serious consequences, leaves but an indistinct trace in the memory. It is either the opening symptom of a disturbance of the super-physical faculties which has hitherto remained occult, and now first manifests itself, or it appears in persons hitherto entirely sane, or in individuals who have already suffered from pronounced insanity, particularly from melancholy, depressed delirium, lunacy and imbecility. In the latter class of cases, the question of responsibility presents no difficulties; far more in the former, in view of the possibility that the guilty act may have been the result of the outbreak of violent passion.(ll) It will then be often impossible to do more than to set forth the possibility or probability of a *furor transitorius*, which is effected by establishing the existence of facts which may have caused it. Such are epilepsy, irregular development, gastric irritations, disturbances of the menstrual or hæmorrhoidal courses, or the secretion of milk, the sudden dispersion of eruptions of the skin, sun-stroke, drunkenness, poison, violent agi-

attended by a suppression of the lochia and milk. The symptoms do not differ from those of mania generally, but it may assume any of the other forms of insanity; and in one half the cases it may be traced to hereditary tendency. According to Dr. Burroughs there is delirium, with a childish disposition for harmless mischief. The woman is gay and joyous, laughing, singing, loquacious, inclined to talk obscenely, and careless of every thing around. She imagines that her food is poisoned. She may conceal the suspicion, and merely avoid taking what is offered to her. She can recognize persons and things, and can, though perhaps will not, answer direct questions. Occasionally there is great depression of spirits, with melancholy. These facts are of some importance in cases of alleged child-murder. This state may last a few hours, or for some days or weeks, and we are told by Dr. Hartshorne, the accomplished American editor, sometimes for months and years; but it generally goes off within a few months, if not earlier. The murder of the child is generally either the result of a sudden fit of delirium, or of an uncontrollable impulse, with a full knowledge of the wickedness and illegality of the act—so that the legal test of responsibility from a knowledge of right and wrong cannot be applied to such cases. Mothers have been known, before the perpetration of the murder, to request their attendants to remove the child. Such cases are commonly distinguished from deliberate infanticide by there being no attempt at concealment, nor any denial of the crime on detection. Several trials, involving a question of puerperal mania have been decided generally in favor of the plea within the last few years. Dr. Ashevell has remarked, that undue lactation may give rise to an attack of mania, under which the murder of the offspring may also be perpetrated. (*Diseases of Women*, 732.) Females in the *pregnant* state have been known to perpetrate the crime apparently from some sudden perversion of their moral feelings. I am not aware that a plea of exculpation on the ground of insanity has been admitted in this country under these circumstances. (See case *Ann d'Hyg*, 1831, I. 374.) For an able analysis of the present state of our knowledge on the subject of Puerperal Insanity, by Dr. Reid, see *Jour. Psychol. Med.* 1884, pp. 128, 284. *Taylor's Med. Jurisprudence*, pp. 594, 595. See as to the legal responsibility in such cases, *ante*, § 53–61.

(k) Friedreich, *Handbuch der gerichtlichen Psychologie*, p. 591.(l) *Gericht. Med.* § 552.(ll) *Ante*, § 53–60.

tation, anger, dread, fright, deep shame, over-exertion of the mind. But where no such probable causes are to be discovered, the examination is necessarily confined to the statements of the party, and the immediate investigation of his intellectual and moral condition, the principal point of attention being the search and scrutiny of the motives of the acts, and the inquiry whether or not they were mingled with hallucinations or illusions, and whether the act was not preceded immediately or for some length of time by bodily disturbances, sleeplessness, restlessness, sadness, &c. Very great difficulties are involved in those cases in which an additional doubt arises whether the ravings were not occasioned by the criminal act itself, the probability of which, with a certain class of temperaments, has been already noticed.(*m*)

#### X. MENTAL UNSOUNDNESS, AS CONNECTED WITH DELUSIONS AND HALLUCINATIONS.(*mm*)

##### 1st. *General.*

§ 241. Under this head will be treated that species of mental unsoundness which is marked by the continued and controlling existence of insane ideas, without being either accompanied with delirium or with moral-maniacal propensities to specific crimes. It may be considered as covering the same phase as the partial lunacy (*partielle verrücktheit*) of Schürmayer, who declares it to consist in crazy notions, with only a secondary participation of the affective faculties, without damage to the peripheric consciousness, and without a decided weakness of the intellectual powers. The subjects of it have completely resolved their individuality into their madness, it is in their eyes an absolute truth, and all demonstration and argument in opposition to it, are idle. Persons of this kind often suffer no mark of their inward disorder to mark their external demeanor, frequently speak and act quite rationally about, and in matters outside of the circle of their hallucinations, and only suffer the point of derangement to transpire when it is adverted to in conversation or when they have occasion to write. The malady may easily lead to the gravest violations of law, for which reason it is of the greatest judicial interest. Where the act is clearly the result of this morbid condition of the mind, no legal responsibility can attach to it.(*n*)

This species of mental unsoundness appears less frequently as a primary disease, than as a *secondary* result, developed out of prior disease, in the form of melancholy or otherwise. When the general expansive and depressive affection of the sentiments recedes, the confusion of the peripheric consciousness is dispelled, the bodily health regains its equilibrium, the patient finds himself endowed with a system of affections and perceptions to which he was before a stranger, but which revolve round one or more manifestly insane stand points.

§ 242. These various fancies are reducible to certain groups, which

(*m*) See *ante*, § 116–118.

(*mm*) For full account of Hallucinations and Illusions, we would refer the reader to *Les Leçons Cliniques de M. Falret, Leçons 3, 4, 5, 6., pp. 95, 185. Paris, 1854; also Etudes Psychologiques par L. F. G. Renaudin, Chap. viii. p. 388. Paris, 1854.*

(*n*) Schürmayer, *Gericht. Med.* § 556, *ante*, § 47–49.

take their point of departure, (1.) in the relations of the individual to the external world, to the supernatural, and to his own personality, or (2.) in perceptive anomalies of depression and mania.

The former view admits the following classification: *crack-brainedness*, (o) where the erroneous notions relate to the objects and relations of the external world, and of the body of the individual; *frenzy*, where they concern things beyond the reach of the senses, religious mysteries and divine inspirations; *folly*, (*Narrheit*,) where the identity of the person has undergone a change, and advanced to a higher stage of worldly honors. In the latter view, the subject matter of the delusion generally depends upon the kind of erroneous notion which accompanied the preceding stages of depression and mania. The delusion itself is of a *depressing* or *elevating* description. The depressive form subdivides as follows:

(a.) *Hypochondriacal delusions*, where anomalous bodily sensations, —delusions of the sense of touch,—suggest the idea, that particular parts of the body have been transformed, that there are parasitic animals in them, or injurious substances, which must be removed, &c.

(b.) *Demoniacal delusions*. The patients declare and maintain, with perfect self-possession and entire calmness, that demoniac beings or other persons, living or dead, have their seat in their bodies. (oo)

(c.) Such delusions, (p) called by Ellinger “Concentric,” as consist in the delusion that the personal reputation of the sufferer has been injured by a real or imaginary misfortune, that the infamy incurred has reached the ears of the highest circles,—impressions still further confirmed by delusions of the sense of hearing,—and that no resource is left but either seclusion from all intercourse with mankind, or restitution of good fame by some brilliant exploit.

(d.) *Peripheric delusions*, in which the patients regard themselves as the objects of a plot on the part of the authorities or of their relatives, or of some secret society, surrounded by spies and functionaries of the secret police, watched and dogged at every step, injured bodily and mentally in action and repose; persecuted and endangered in life and property, or that they are beleaguered by thieves, robbers, and murderers, or that spirits hover in the air to torment and disquiet them, &c.

The elevating phase of this species of mental unsoundness, subdivides itself, according to Schürmayer (pp):—

(a.) *Religious delusions*, which may be considered in connection with *dæmonia-mania*, already noticed, (q) in which the patient pretends to stand in a particular position, as regards degree and distinction, in the eye of God, to have been appointed censor, prophet, reformer, and Messiah, &c.; it is generally accompanied with hallucinations of sight and sound, and often leads to the most dreadful crimes.

(b.) *Delusions of pride*. The patients suppose themselves called, by their qualifications of person and mind, to the most important missions.

(c.) *Delusions of vanity*. The delusion here is a supposed descent

(o) “A little cracked,” to use Dr. Rush’s popular synonyme, for what he at the same time tells us is expressed by the Scotch by the phrase “having a bee in his bonnet.”

(oo) See *ante*, § 210–219.

(p) Ellinger, p. 132.

(pp) *Med. Jour.* § 556.

(q) *Ante*, § 210–221.

from a princely lineage, elevation to a higher social position, &c., the enjoyment of which, however, is destroyed by the machinations of the envious and malevolent.

(d.) *Sexual delusion*, which is sometimes of a more intellectual, sometimes of a more carnal nature, is a state of mind in which the patients suppose that, in consequence of their personal charms or other advantages, either all people of the opposite sex, or even persons occupying a higher rank, such as princes, are in love with, or betrothed to them in spirit. This is attended with many hallucinations, particularly of the sexual kind.(*qq*)

§ 243. It is not to be denied that the proper consideration of this species of mental unsoundness presents great difficulties, and the practical suggestions of Ellinger(*r*) are indeed worthy of peculiar attention. He notices the following phases :

"1. An impression of having sustained wrongs at the hands of certain persons, against whom revenge is meditated and executed. Here the diseased individual often acts on mature reflection, and in the full knowledge that he has no right to take revenge, and of the consequences which ordinarily ensue, and then it may occur either that he prefers undergoing the extremity of the law, and perishing together with the supposed wrong-doer, to remaining longer exposed to his assaults, or that he proceeds on the ground of his known and established insanity, calculating to escape responsibility and punishment on the strength of the indulgence accorded to his case. Here there appears in general some ground to assume a moral responsibility.(*rr*)

"2. An impression that the patient is acting at the instigation, or under the constraint of demons. In this case it might become necessary to inquire whether, and in how far, the patient understood that the demands of the demons were wrongful, and that he was at liberty to withstand them, and whether, and in how far, it was actually in his power to withstand them.

"3. The patient imagines himself beset by thieves, &c., and neither sure of his property nor of his life. This may perhaps be treated as a case of self-defence, and all responsibility excluded.

"4. The self-consciousness of the patient is perverted, and he acts with that plenitude of power with which he is invested in view of his position and his destiny, in religion, politics, &c. In this case, as under the third position, responsibility is out of the question.

"But as a fixed idea never occurs in such isolation as is erroneously supposed, there being always a series of phantoms connected into a system, the outlines of which it may be, perhaps, impossible to define with accuracy; as the entire affective life has become altered and irregular, the general views of men and things having become distorted, and illusions of the senses being often brought to light by a rigid scrutiny, which entirely escaped the eye of the superficial observer; as the action, re-action, and intro-action of the psychical faculties is no longer measurable by the ordinary standard: *opinions must be given with the greatest circumspection and every possible reservation, whenever the connection or want of connection between the illusion and the deed is not perfectly evident.*"(*s*)

(*qq*) *Ante*, § 199.

(*r*) p. 137.

(*rr*) See *ante*, § 47-49.

(*s*) *Ibid.*



It is not easy to mistake between the *error of a lunatic* and the *error of a sane man*. The decisive point of difference between them is, that in the latter case, the action of the thinking faculties, from whatever cause it be, only terminates too soon, and before the entire subject has been thoroughly sifted, and that such an error, after having been properly refuted, can only be maintained by dint of obstinacy or indolence. In insanity, on the contrary, the error of the understanding is occasioned by the abnormal function of the perceptive faculty. One or two prevailing schemes of perception<sup>(ss)</sup> are applied to almost all other perceptions to which they can be adjusted in any way, and thus one and the same *tout ensemble* of perceptions is continually reproducing itself on the slightest provocation. Here the chain of associations loses, in the eye of the individual, its accidental, personal, and contingent character, and, by its constant recurrence, deludes the understanding with the idea that the same connection subsists between the objects in reality as in the imagination of the individual, until at last reason herself is misled into seeing a necessary relation of cause and effect in the perceptions which it finds itself invariably associated. The individual is therefore compelled to think accordingly, and even if it is sometimes brought, by instruction, to acknowledge its error, it is only to relapse into it, not so much from obstinacy, as because of this compulsory synthesis of the perceptive faculties. *A sane man in error retains the power of doubting, not the madman*. This condition of the perceptive faculties is also the cause of the great indifference manifested towards surrounding things, of the dreamy manner and the illusions growing out of it. It is also a matter of course that the perceptions, by their constant recurrence, cease to be mere perceptions, but subsequently take rank as thoughts and ideas, in consequence of their constant action upon the understanding, and their assumption of the form of propositions.<sup>(t)</sup>

§ 244. Delusion may spread in such a way as to cover the whole surface of the mind, leaving no sound perception untouched. It is then distinguished by the general want of connection and consistency between the perceptions, and by the absence of any symptom of positive feebleness of the understanding, in spite of the disruption of the thread of ideas and the incongruous juxtaposition of the fragments. Dr. Rush, in the following report given by him of the conversation of a patient laboring under this phase, very happily illustrates this incoherence, and at the same time the occasional point by which its intellectual operations are distinguished: — “No man can serve two masters. I am Philip, King of Macedonia, lawful son of Mary, Queen of Scots, born in Philadelphia. I have been happy enough ever since I have seen General Washington with a silk handkerchief, in High street. Money commands sublunary things, and makes the mare go; it will buy salt mackerel made of ten-penny nails. Enjoyment is the happiness of virtue. Yesterday cannot be recalled. I can only walk in the night-time, when I can eat pudding enough. I shall be eight years old to-morrow. They say R. W. is in partnership with J. W. I believe

(ss) Compare Hagen, Vol. II. p. 707.

(t) Ibid. p. 818.

they are about as good as people in common—not better, only on certain occasions, when, for instance, a man wants to buy chincopins, and to import salt to feed pigs. Tanned leather was imported first by lawyers. Morality with virtue, is like vice not corrected. L. B. came to your house and stole a coffee-pot, in the twenty-fourth year of his majesty's reign. Plum-pudding and Irish potatoes make a very good dinner. Nothing in man is comprehensible in it. Born in Philadelphia. Our fore-fathers were better to us than our children, because they were chosen for their honesty, truth, virtue and innocence. The Queen's broad R originated from a British forty-two pounder, which makes too loud a report for me. I have no more to say. I am thankful—I am no worse this season; and that I am sound in mind and memory, and could steer a ship at sea, but am afraid of the tiller. \* \* \* Son of Mary, Queen of Scots. Born in Philadelphia. Born in Philadelphia. King of Macedonia.”(u)

And Shakspeare gives, with equal truth, the following soliloquy of a madman, in whom the *depressing* rather than the *elating* phase is exhibited:

“Who gives any thing to poor Tom,  
Whom the foul fiend has led through fire,  
And through flame, through ford and whirlpool,  
Over bog and quagmire, that hath laid  
Knives under his pillow, and halts in his pew,  
Set rats-bane by his porridge, and made him to  
Ride upon a bay trotting horse over four-inch  
Bridges, and to course his own shadow for a traitor.”

And Lear, in language still more expressive of misery, thus complains:

————— “I am bound  
Upon a wheel of fire that mine own tears  
Do scald like molten lead.”

## 2d. *Partial Delusion.*(v)

§ 245. Under this head may be enumerated, *Delusions of the Senses, Illusions and Hallucinations*. A distinction is very properly drawn by Schürmayer, following in this respect the general current of modern opinion, between illusions and hallucinations, the former comprising mistakes in the conception and interpretation of the perception of objects *actually present*, while in the latter, the perception which originates in a diseased action of the senses, appears to the patient as if the sensation were produced by a real external object acting upon the senses.(w)

The same distinction is thus stated by Dr. Taylor: “*Hallucinations* are those sensations which are supposed by the patient to be produced

(u) Rush on the Mind, pp. 242-243.

(v) See the very interesting discussion of this point by Feuchtersleben,—Principles of Medical Psychology, being the outlines of a course of Lectures by Baron Von Feuchtersleben, M. D. Vienne, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by G. B. Babington, M. D., F. R. S., &c. London, printed for the Sydenham Society, 1847, pp. 279-343.

(w) Schürmayer, Gericht. Med. § 554.

by external impressions, although no material objects may act upon the senses at the time.(x) *Illusions* are the sensations produced by the false perception of objects.”(y) “When a hallucination,” he proceeds to say, “or an illusion is believed to have a real and positive existence, and this belief is not removed either by reflection or an appeal to the other senses, the individual is said to labor under a *delusion*; but when the false sensation is immediately detected and is not acted upon as if it were real, then the person is sane.”

“As a morbid condition of the brain,” says Sir Benjamin Brodie, “may produce the impression of visible objects, or of voices, which have no real existence, so it may also produce notions of a more complex and abstract character, and these may be constantly obtruded on the mind, so that the individual is unable to withdraw his attention from them, being, as it would seem, as much beyond the influence of volition as the muscles of a paralytic limb. Thus, one person believes himself to be ruined as to his worldly affairs, and that he and his family, though really in affluence, are reduced to extreme poverty; while another is persuaded that he is in possession of unbounded wealth, the consequence being that he is in danger of being ruined by extravagance; and a third, is under the apprehension of his being accused of some dreadful crime, and perhaps seeks refuge from his fears in self-destruction. It is more difficult to escape from the latter than from the former class of illusions, as the appeal lies not from one sense to another, but to a more refined process of thought and reflection, and the examination of evidence.”(z)

We may step for a moment from the strict line of discussion to notice the striking remarks on this point of the great Scotch metaphysician. “Several phenomena in human nature,” says Dr. Reid, “lead us to conjecture that, in the earliest period of life, we are apt to think every object about us to be animated. Judging of them by ourselves, we ascribe to them the feelings we are conscious of in ourselves. So we see a little girl judges of her doll, and of her playthings. And so we see rude nations judge of the heavenly bodies, of the elements, and of the sea, rivers and fountains. If this be so, it ought not to be said that by reason and experience we learn that certain things are inanimate, to which at first we ascribed life and intelligence. If this be true, it is less surprising that, before reflection, we should for a moment relapse into this prejudice of our early years, and treat things as if they had life which we once believed to have it. It does not much affect our present argument, whether this be or be not the cause why a dog pursues and gnashes at the stone that hurt him; and why a man in a passion, for losing at a play, sometimes wreaks his vengeance on the cards or dice. It is not strange that a blind animal impulse should sometimes lose its proper direction. In brutes, this has no bad consequence; in men, the least ray of reflection corrects it and shows its absurdity.”(a)

(x) See on this subject, remarks by Dr. Sigmond, *Jour. of Psychol. Med.* 1848. p. 585.

(y) Taylor's *Medical Jurisprudence*, p. 552.

(z) *Psychological Inquiries, &c.* London, 1854. p. 79.

(a) Reid on the active powers of Malevolent Affection, p. 569. See also Schürmayer, *Gericht. Med.* § 554.

“Hallucinations,” says Ellinger, “generally occur in every form of mental derangement, but chiefly in the higher stages of depression and mania, in deliriums, in lunacy and in confusion of mind, and lead to the commission of crimes, particularly when the patient was originally not without the taint of culpable passions.”<sup>(b)</sup> For judicial purposes it will be found advantageous to arrange hallucinations under the four following heads :

§ 246. 1. In individuals who show no signs of disorder in their affective or intellectual systems, they will not operate to suspend the responsibility of the agent; but they may become the motives of violations of the law.<sup>(c)</sup>

§ 247. 2. In individuals in whom the disease of the mind has made some progress, but has not yet acquired a permanent form; the victims often make no secret of them, and recognize them as intruders into the working of their thoughts; while in other cases, they keep them to themselves.

§ 248. 3. In persons who are in a state of total drunkenness, under the influence of poison, or overpowered by sleep, where external consciousness is entirely gone, and utter confusion of the senses obtains in such cases the free power of self-control may be entirely dislodged.

§ 249. 4. In individuals whose insanity is equally mature and manifest, the absence of freedom of agency is not to be doubted; the responsibility of such persons *in foro* is, therefore, out of the question.

§ 250. According to Hagen,<sup>(d)</sup> the cause of the delusions of the senses is either a mere physical stimulus which, acting upon the fountain heads of the sensational nerves in the brain, produces eccentric sensations, and induces the individual to incorporate his sensations into an image, in which case it will depend upon the particular circumstances of the case, especially on the mental and moral condition of the individual, whether or not such apparitions are believed to be genuine. And upon another hypothesis, suggested by the same author, the disease is only a strong morbid susceptibility of the brain to eccentric sensations, with which some fancy or other comes into such a collision as to act as the stimulating cause of a paroxysm, bringing, at the same time, a complete phantom before the external sense, just as in cases of convulsive diseases, St. Vitus's dance, &c., an intended slight motion may bring a convulsion into that particular system of muscles. Great care must be taken, however, not to include under this head what is not really a delusion of the senses. If, for instance, a madman takes a person or a black cat for the devil, there is no delusion of the senses. On the con-

<sup>(b)</sup> Ellinger. p. 167.

<sup>(c)</sup> Boswell says, “Dr. Johnson mentioned a thing as not unfrequent, of which he (Boswell) had never heard before—being called, that is, hearing one's name pronounced by the voice of a known person at a great distance, far beyond the possibility of being reached by any sound, uttered by human organs. An acquaintance, on whose veracity, Boswell says, he could place every dependence, told him that, walking home one evening to Kilmarnock, he heard himself called from a wood, by the voice of a brother who had gone to America, and the next packet brought the account of that brother's death. Macbean asserted that this inexplicable *calling* was a thing very well known. Dr. Johnson said, that one day, at Oxford, as he was turning the key of his chamber, he heard distinctly his mother call *Sam!* She was then at Litchfield; but nothing ensued.” Winslow's Anatomy of Suicide, pp. 127–128.

<sup>(d)</sup> Compare Wagner's *Handwoerterbuch der Physiologie*. Vol. II. p. 811.

trary, in supposing the devil to have assumed such a shape, the maniac only directs his madness to an object of which in itself he has a correct perception. Delusions also, we are admonished by Schürmayer, must not be mistaken for *confusion of the senses*, which consists in an entire obstruction of the conceptions, an incapacity to obtain adequate apprehensions, and sometimes in an entire want of objective consciousness and recollection.

§ 251. The following interesting illustration of partial delusion is given to us in Dr. Mayo's late work: "In a case to which I was called in by Dr. Monro, a few years ago, it was our painful duty to resist the liberation of a patient, an old lady, whose confinement under certificates had continued for sixteen years. For six years she was described as having been in a state, first of acute, and then of chronic mania. For many years, we learned, that she had regained the power of conversing consecutively and sensibly, indeed without the smallest evidence of incoherent or irrational remark, and such appeared to us, her present state. The objections which existed to her being then considered sane, if she had been insane up to the time we saw her, on the ground of her advanced age, weighed on our minds, but seemed insufficient. The evidence of her attendants, who considered her still insane, on the ground of occasional outbreaks of temper, was that of interested witnesses. She was a patient in chancery, and the visiting physicians had become favorably disposed to her enlargement, as a sound-minded person. Now the question was, in this instance, determined in our minds, by a discovery of a very remarkable notional delusion which held its ground in her mind. In a set of drawers in this lady's bedroom, and in certain trunks, there, to which we were conducted without her knowledge, we witnessed a large and very heterogeneous and dirty collection (dirtiness had been a symptom of her insane state) consisting of old bottles, broken cups and saucers, brass knobs, bits of old string, shreds of linen and cloth, small bundles of wood such as light fires, pieces having been apparently picked up and tied together; a cup containing dirty food of the most disgusting appearance, which had evidently been long there; bits of valueless stones, coals, nails, &c. This accumulation which could not have been extemporized by the attendants to make out a case, and of which accordingly the patient must have been long aware, would have occasioned strong doubts as to her sanity, even if no prior grounds of suspicion had existed; but, carefully preserved by one, who, up to a recent date, had been so far suspected of insanity that she had not been set free by the visiting commissioners; who was in her seventy-first year, and therefore the less likely to have obtained a cure, it became the opinion of Dr. Monro and myself, a conclusive ground for resisting this lady's immediate enlargement."(e)

§ 252. Particular hallucinations are classified by Abercrombie under the following heads:—

1. Propensities of character, which had been kept under restraint by reason or by external circumstances, or old habits which had been subdued or restrained, developing themselves without control and leading

(e) Mayo on Medical Testimony in Lunacy, pp. 33, 34.

the mind into trains of fancies arising out of them. Thus, a man of an aspiring, ambitious character may imagine himself a king or great personage; while in a man of a timid, suspicious disposition, the mind may fix upon some supposed injury, or loss either of property or reputation.

2. Old associations recalled into the mind, and mixed up perhaps with more recent occurrences, in the same manner as we often see in dreaming. A lady, mentioned by Dr. Gooch, who became insane in consequence of an alarm from a house on fire in her neighborhood, imagined that she was the Virgin Mary, and had a luminous halo around her head.

3. Visions of the imagination which have formerly been indulged in, of that kind which we call waking dreams, or castle-building, recurring to the mind in this condition, and now believed to have a real existence, I have been able to trace to this source of the hallucination. In one case, for example, it turned upon an office to which the individual imagined he had been appointed; and it was impossible to persuade him to the contrary, or even that the office was not vacant. He afterwards acknowledged that his fancy had, at various times, been fixed upon that appointment, though there were no circumstances that warranted him in entertaining any expectation of it. In a man, mentioned by Dr. Morison, the hallucination turned upon circumstances which had been mentioned when his fortune was told by a gipsy.

4. Bodily feelings giving rise to trains of associations, in the same extravagant manner as in dreaming. A man, mentioned by Dr. Rush, imagined that he had a Caffre in his stomach, who had got in at the Cape of Good Hope, and had occasioned him a constant uneasiness ever since. In such a case, it is probable, that there had been some fixed or frequent uneasy feeling at the stomach, and that about the commencement of his complaint, he had been strongly impressed by some transaction in which a Caffre was concerned.

5. There seems reason to believe that the hallucinations of the insane are often influenced by a certain sense of the new and singular state in which their mental powers really are, and a certain feeling, though confused and ill-defined, of the loss of that power over their mental processes which they possessed when in health."<sup>(f)</sup>

§ 253. Hallucinations involving a belief that the patient has been transformed into various species of animals have been at times almost epidemic. Analogous to these is the belief that worms, frogs, or snakes have taken up their abode in the head or stomach, which consume the brain or entrails. Men have fancied themselves pregnant, and imagined themselves shadows or corpses, or to be constructed of glass, butter, or wax. At one time the belief in a transformation into wolves or other wild animals became so prevalent as to acquire a title to itself (Lycanthropia). In cases of this last phase the disease became so uncontrollable as to impel its victim to a close imitation of the wild animal itself, falling upon other men and animals, and snapping at and biting them. Andral relates a case of a child of fourteen years, who tore wildly

(f) Abercrombie on the Intellectual powers, pp. 255, 256.

about the fields, biting other children that came in its way, and producing the greatest consternation in the neighborhood.(g)

## XI. MENTAL UNSOUNDNESS AS CONNECTED WITH LUCID INTERVALS.(h)

§ 254. Mental diseases are not always continuous, but they improve, and alter their form in such a manner as to exhibit abatement or cessation of the disease. When, therefore, an illegal act has been committed by a man at such a time, *i. e.* after the occurrence of a manifest disorder of his mental faculties, the question at once arises, whether the mental alienation has really ceased, or whether it is not still present in a slumbering state, and possibly influential in determining the act.(i)

(g) Cours de patholog. Interne. Tome III. Paris, 1836. 8 p. 186. The curious will find a very interesting disquisition on this point in Wierus's work *De præstigis dæmonum*, Lib. IV. c. 23.

(h) L. Kraemer, *Handbuch der Gericht. Med.* Halle, C. A. Schwetschke, 1851, § 124.

(i) The subject of lucid intervals has lately been investigated in a very learned treatise by Dr. Lehr (*Die Lehr von den lichten Zwischenzeiten in Gerichtlich. Medicinischer Beziehung.* Henke *Zeitschrift*, 3). Two views of lucid intervals present themselves, which vary widely in their judicial relations, one of which (that espoused by Dr. L.) regards them as a suspension of the *disease*, while the other treats them merely as a temporary suppression of its *manifestation*.

We condense from M. Renaudin the following very interesting remarks on this point:—

Lucid intervals is the name ordinarily given to the condition in which the insane person is placed at the end of a strong delirious excitement, or when he awakes from a profound stupor.

We are generally led to believe the existence of a lucid interval when delirious ideas no longer manifest themselves, and when the insane person shows himself accessible to other pre-occupations, and thus appears to enjoy the full amount of moral liberty allowed to him.

It has been already said that the approach of insanity is rarely sudden; and that being based, in some respect, upon a natural or acquired predisposition, it is preceded by a period of incubation, that paves the way for a manifestation of the disorder often long before its actual appearance. When a retrospective examination of the antecedents of the disease is made, a proof is found of the latent advances which insanity makes.

But under this apparent reason is concealed a disorder, which makes a sensible progression every day. Irritability is developed; the regimen is irregular; the affective sentiments are changed or perverted; everything has become an object of contrariety: delirious convictions are organized upon the perceptive errors every day more numerous; and finally insanity shows itself in a critical excitement, the more decided as the lesion of sensibility has become more complete, and as the incubation is marked by a more or less concentrated struggle. The patient is then isolated; irritating causes are removed, and immediately the over-excitement diminishes; a calmness succeeds. This transient remission, however, ceases as soon as the unhealthy influence regains its empire, and we then see that which was called a lucid interval, was, in fact, but a transient remission.

Continuity is essentially the characteristic of monomania and lypomania. Either the insane person, by convalescence, advances to a complete cure, or he still remains affected with the original type. Every intermediate situation is inadmissible, except when an incidental affection, causing a kind of metastasis, for the moment suspends or masks the madness. Whenever it is not a true crisis, it only causes a fleeting remission of the symptoms rather than of the pathological condition; and the physician assumes a serious responsibility when, simply on the face of this apparent calm, he conceives the possibility of the patient's return to his family, where but too soon the causes will be found reunited that restore to insanity all its intensity. It is in not sufficiently resisting the desires of friends, that the physician paves the way for these returns, which are less relapses than the recrudescence of an uncured pathological state.

But though, in an absolute diagnostic point of view, we reject the lucid interval;

As indicated above, there is, strictly speaking, but one species of unsoundness of mind, and what we term forms, are more properly stages

though, when the existence of mental unsoundness has been once shown, we do not admit that the remissions diminish irresponsibility; we still think that the deranged can perform certain acts with a perfect knowledge of cause, and can even exercise his intelligence, provided that he is placed under the influence of certain protecting conditions. The regulating discipline of an asylum tends greatly to this result, and therefore it is not astonishing if our insane can perform certain civil acts of a simple character, and may consent to a division of property, or even authorize a marriage. The legality of the act is essentially subordinate to a previous appreciation of the extent of the delirium at the time, and the relations existing between the action and the delirious conceptions. So, though not admitting the existence of a lucid interval, we still believe that the madman may be placed in a situation that permits him to appreciate the action demanded of him. In a criminal point of view, this distinction cannot be established, since the action is a logical consequence of the madness; and daily observation teaches us that it is during these moments of apparent sanity that the maniac meditates and prepares the most dangerous projects, as much against himself as against others. The ingenious combination of means that the lypomaniac uses in order to obtain his object, is urged in vain as proof of lucidity; since the delirious conceptions, whilst rendering the premises false, are far from always deranging the logical chain of the other intellectual operations. We should then consider the lypomaniac as an oppressed person who conspires against his enemies, and as he is the most feeble, he calls cunning to the aid of his legitimate means of defence.

In the maniac, especially in the paroxysm, we observe a disordered agitation, accompanied with such an amount of incoherence that the affected person appears to be rather the sport of some strange motive power than the originator of this extreme mobility. There are times when even this storm is dissipated as if by enchantment. Dissimulation becomes possible for a certain time; the delirium is in some degree suspended, and we may be led to suppose a spontaneous return to reason. How often have we seen maniacs cease to rave during the questioning of the judge, and immediately afterwards recommence their course of wanderings.

The more vivid the excitement is, the more considerable is the expenditure of the vital forces; so that when it has lasted a certain time, a period of prostration arrives; but, allowing a remission of some somatic symptoms, still the incoherence of ideas is persistent with other symptoms. Sometimes the transition is rapid; and then, above all, is it necessary to attribute the situation to its true causes, in order not to expose the examiner to an error of diagnosis.

Periodicity is generally observed in mania; and it is then that insanity of actions must be distinguished from insanity of ideas. Though often united, still they are sometimes isolated from each other, or follow one another. It is on this account that the most extravagant acts sometimes correspond with a certain intellectual lucidity, which at the first glance may impose upon us; and it is then that we observe persons thus insane justify their actions by the most specious reasonings. We must not, however, take this intellectual waking for a lucid interval; for, although masked, the delirium still continues.

In other cases, the madness is less intense. All excitement has disappeared, and the insane person answers all our questions so reasonably as to lead us to infer the existence of a lucid interval; but the illusion is soon destroyed when, in pushing our examination, we weary him with questions: he becomes agitated; loses the thread of his ideas; becomes more and more incoherent, and so proves to us that he has had what scarcely might be called a transitory remission.

There are cases where the periodicity appears more determined, and where the conduct of the patient betrays no sign of the insanity which he formerly manifested. The lucid interval can perhaps be sometimes admitted under these circumstances; but it is still necessary to exercise some caution in regard to the value of these appearances. If the patient denies his situation; if he refuses to acknowledge the principal acts which have characterized his paroxysm; if he seeks to attribute them to some foreign cause, it is a proof that the reason is not sound, and that a paroxysm is always imminent; and lucidity cannot be admitted, since errors of perception and judgment still exist. This observation especially applies to that kind of mania in which excessive irritability plays the principal part; where the remissions are irregular, and the paroxysms are shown under the influence of the slightest cause. We cannot, then, consider this momentary repose of a permanent effect which is always ready to break out, as a lucid interval. We might say as much of the period of prostration following a period of strong excitement.

When periodicity is complete, it is recognized at first by the appearance of the pa-



of one and the same disease. This disease, however, may become fixed for life at one or the other stage, or may travel slowly or rapidly, and so to speak, imperceptibly from one stage to the other, if recovery does not intervene. We must therefore look for *criteria* to prove that the symptoms observed are not those of a progress of the disease, but of *recovery*, for without such criteria we should be induced to presume the continuance of the disorder. The following suggestions, given by Ellinger, and repeated by Schürmayer, are important in the consideration and decision of such cases. As a general thing, there is no recovery from mental unsoundness which has been attended with permanent and general delusion: in the other forms it sometimes, though very rarely, takes place suddenly, the consequence of strong excitement, as a sudden outburst of rage, or even in sleep, without any preceding physical or moral change. Its general development, however, is slow, being marked with a gradual lessening of the affective irritations, with an increased coherency and consequentiality of thought, with a return of the natural inclinations and appetites, of sleep and nourishment, and with a disappearance of the physical anomalies. Sometimes, however, it advances with a more fluctuating step, agitated as it were with men-

oroxysm, which has, in some measure, a critical termination. The lucid interval can then be admitted, if there is a complete contrast between the two situations, if the patient appreciates them, and if the manifestation of each fit is shown by an approach which is always regular, and which is always produced under the influence of the same causes. It is, if we can thus express ourselves, a momentary cure, which is prolonged for a longer or shorter period of time, and which often finishes by becoming a complete one.

Finally, when the affection passes to the chronic state, the patient raves less, because excitement fails him, and also because his will is in want of a regulating force. We cannot consider this as a lucid interval where the patient is unable to act except when directed by another's mind. When mania passes into dementia, the transition is sometimes shown by an apparent re-awakening of reason, which is, as it were, its last glimmer. Generally, it is the mobility of maniacs which is most favorable to the action of the derivations whose results sufficiently impose upon the superficial observer so as to cause him to admit the existence of a lucid interval.

The stimulated attention of these patients fixes, for a moment, this mobility, directs cunning towards the accomplishment of a project, where a personality is in play, and we are often surprised with the address shown in organizing a plan of escape. But, in spite of this incidental derivation, the maniacal temperament still remains the same, unless, indeed, this transitory action of the mind should become a crisis.

Dementia, where the psychico-somatic existence is gradually extinguished, is a ruin in which a trace of a better time is sometimes found. If, occasionally, remembrances of the past show themselves, this apparent lucid interval is no more than a retrospective reasoning without actual application. When, instead of being the termination of the other forms, dementia is primitive or idiopathic, the lucid intervals can be sufficiently clearly drawn, and the diagnosis does not present as many difficulties as in the other forms. In fact, the demented cannot dissimulate; since, to do this, a reactive power would be necessary, which in him is entirely wanting. He cannot conceal his incapacity under the mask of an energy whose absence is the principal feature of his disease. More submissive than the others to somatic influences, he is sometimes a prey to an almost maniacal excitement; but if this is not critical, it forms an expenditure of power resulting in pure loss, and making one more step in this period of prostration. In a word, if the man lives for a moment in the past, he is as nothing in the present; and it is under privilege of this restriction that a lucid interval, provoked by some foreign stimulant, but without root in an exhausted moral system, can be admitted.

Hence we see that the lucid interval is of much rarer occurrence in mental unsoundness than is generally thought. It is in mania that the periodicity of regular paroxysms permits us to admit it; but then, also, it is still necessary to guard against being imposed upon by a remission of excitement, which is not that of the frenzied condition.—See *Études Physio-Somatiques sur l'Aliénation Mentale*, par L. E. F. Renaudin, chap. ix. p. 522. Paris, 1854.

tal tides, the flood of each of which, however, falls below the high water-mark of its predecessor, while each ebb more and more nearly approaches the line of sanity. To constitute a recovery, the patient, if he has not acquired a more rational constitution of his moral character, must at least have regained that which he enjoyed before the appearance of the disease: he must have re-acquired a taste for his former occupation, must again display his former inclinations and points of interest, must understand what he remembers of his disease when assisted by explanations, must speak of it as of something to which he is now superior, must clearly see the erroneous nature of the delusions under which he labored, and must be really contented and internally at peace. But if, on the other hand, the former character of the disease has only disappeared in part; if the old insane grudge against one person or another is manifested; if there is a smothered rage, or aversion to persons or things formerly cherished; if the alleged convalescent refuses to acknowledge his disease in general or in regard to particular points; if he dislikes to speak of it; if his conduct is marked by unnatural irritability, suspicion or boisterous and immoderate joy, or by other anomalous features, a perfect recovery has *not* taken place, although in point of intelligence, formal and substantial, not the slightest anomaly is perceptible. (*j*)

§ 255. Where the patient's recovery from a mental disorder is not clearly established, it may still be doubted whether an alleged criminal act was committed under circumstances involving the full responsibility of the agent. Whether the malady was of long or short duration, whether it was more or less intense, is here of no decisive import, and of equally little moment is the apparent reflection and preparation with which the act may have been committed.

The different kinds of improvement or interruption in cases of unsoundness of mind, present various features, which vary in accordance with the duration and degree of abatement.

1. *Intervallum lucidum*, with a restoration of consciousness in general and of insight into the past and present, but without entire clearness, and with the continuance of a more, though not entirely subdued temperament. The patient is not yet the same as he was before the disease overtook him. If he was, he would have to be regarded as restored to health, and there would, in its strict meaning, be no question as to a lucid interval.

2. *Remission* differs from a lucid interval only in degree, being generally attended with a subsidence of the external manifestations of the disease, not sufficient, however, to be mistaken for recovery.

3. *Alternation* is the term given to the change from one form of mental unsoundness to another, particularly from depression to mania and the converse, not however from psychical to bodily, or from bodily to psychical manifestations. Where for instance the individual has long suffered from morbid depression or elation of spirits, this may gradually decrease and give place to an apparent return of health, which however does not last long, but sooner or later lapses into the opposite condition, so that depression turns into mania, and mania into depression.

(*j*) Compare Ellinger, p. 169. Schürmayer, § 573.

4. *Intermission*, when the disease recurs at more or less regular periods, and the disease presents no anomalous symptoms.

§ 256. The restoration of moral responsibility progresses in correspondence with the progress of recovery. In passing, therefore, upon a given case, regard should be had, not only to the individual circumstances, but also to the time intervening between the cessation of patent insanity and the commission of the offence. (*k*)

§ 257. On this point Dr. Rush thus speaks: "The longer the intervals between the paroxysms of madness, the more complete is the restoration to reason. Remissions rather than intermissions take place when the intervals are of short duration, and these distinguish it from febrile delirium in which intermissions more generally occur. In many cases every thing is remembered that passes under the notice of the patient during a paroxysm of general madness, but in those cases where the memory is diseased as well as the understanding, nothing is recollected. I attended a lady in the month of October, 1802, who had crossed the Atlantic ocean during a paroxysm of derangement, without recollecting a single circumstance of her voyage any more than if she had passed the whole time in sleep. Sometimes everything is forgotten in the interval of a paroxysm, but recollected in a succeeding paroxysm. I once attended the daughter of a British officer, who had been educated in the habits of gay life, who was married to a Methodist minister. In her paroxysms of madness, she resumed her gay habits, spoke French and ridiculed the tenets and practices of the sect to which she belonged. In the intervals of her fits, she renounced her gay habits, became zealously devoted to the religious principles and ceremonies of the Methodists, and forgot everything she did and said during her fits of insanity. A deranged sailor, some years ago, in the Pennsylvania Hospital, fancied himself to be an admiral, and walked and commanded with all the dignity and authority that are connected with that high rank in the navy. He was cured and discharged: his disease sometime afterwards returned, and with it all the actions of an admiral which he assumed and imitated in his former paroxysm. It is remarkable that some persons when deranged *talk* rationally, but *act* irrationally, while others act *rationally* and talk *irrationally*. We had a sailor some years ago in our hospital, who spent a whole year in building and rigging a small ship in his cell. Every part of it was formed by a mind apparently in a sound state. During the whole of the year in which he was employed in this work, he spoke not a word. In bringing his ship out of his cell, a part of it was broken. He immediately spoke and became violently deranged soon afterwards. Again, some madmen *talk* rationally and *write* irrationally; but it is more common for them to utter a few connected sentences in conversation, but not be able to connect two correct sentences together in a letter. Of this, I have known many instances in our hospital." (*l*)

§ 258. Mania frequently assumes a type in which the periods of return and of cessation are marked with the greatest exactness and regularity. (*m*) Medicus, in his history of periodical diseases, (*n*) tells us

(*k*) Schürmayer, *Gericht. Med.* § 574.

(*m*) Siebold, *Gericht. Med.* § 217.

(*l*) Rush on the Mind, pp. 162, 163, 164.

(*n*) Kailsr. 1764.

of a girl who was subject to a delirium which came on every evening at exactly the same hour, and lasted three hours and a half. Of two women attacked with periodical madness, one was deranged nine days in each month, and the other two days.(o)

## XII. TREATMENT OF INSANE CRIMINALS.

§ 259. The enlargement of the range of insane irresponsibility which the preceding sections recognize, and particularly its extension to cases of monomania, (*mania sine delirio*), makes the subject of the subsequent treatment of the insane offender of very momentous importance. Even if we adopt the severest legal tests, yet when a case occurs of an acquittal, as it sometimes must on the most stringent principles, the offender, who in this case, on the law's own assumption, is a mere "animal," should be no more permitted to range the streets than should a mad dog or a mad bull. But in point of fact, there are a myriad of phases of mental unsoundness, none of which are consistent with entire responsibility, and yet each of which has its distinct degree of moral culpability attached to it. Rare, indeed, are the instances, where there is not a consciousness of guilt, which, though distorted or faint, is, nevertheless, appreciable. Still rarer are the cases of acquittal where the insanity of the perpetrator is so abhorrent as to exclude it from the range of imitation by those who may desire to commit crime with impunity. And if these considerations be thrown aside, there still remains the fact that insane crime becomes epidemic when it becomes heroic; and that the only way to divest it of this quality, is to subject it to that wholesome but homely discipline which strips it of its sentimentality, and at the same time, destroys its capacity for mischief. In this view it is recommended that wherever such provision do not already exist, there should be a separate penitentiary establishment for insane offenders, where they may continue to be confined, under the severest discipline consistent with health, until it appear on evidence taken upon due notice to the prosecuting authorities, that the patient is entirely sane. The propriety of such a course will appear by an examination of the subject under the following heads:

- (1.) Retribution.
- (2.) Prevention.
- (3.) Example.
- (4.) Reform.

§ 260. (1). *Retribution*. The question here depends on that of guilt. Was the offender in any sense a moral agent in the act complained of? The answer presupposed by the present inquiry, viz., that of the relations of a person judged irresponsible on account of insanity, is, that he was not. And in a strict technical sense, this is undoubtedly true. The inquiry, however, may be pushed farther back, and here the case of *delirium tremens* may be taken as an illustration.(p) *Delirium tremens*, even on the most stringent principles,

(o) See also Henke's Zeitschr. 13 Bd. sec. 159.

(p) This question has already been touched upon, and the authorities bearing upon it have been noticed. See *ante*, § 62-70. In opposition to the views expressed in the text

exonerates its subject from the penal consequences of a crime committed under its direct influence. And yet it is clear, *first*, that *delirium tremens* is the result of a prior vicious indulgence; *second*, that if the patient be permitted to wander about when the delirium continues, he will do further mischief, and, *third*, that if the offender escape in entire immunity, the example will be likely to be followed as a pretext, if not caught as a contagion. And under these circumstances what is to be done? It is plain that some species of confinement must be resorted to; and that if such a method of discipline be applied, it will be, in a moral point of view, thoroughly justified by the delinquency which was the voluntary cause of the diseased mental condition under which the crime was committed.

§ 261. What has just been said of *delirium tremens* applies with greater or less exactness to all other cases of mental unsoundness. Insanity, which is not congenital, or the result of accident or old age, is, in most cases, the result of causes which the patient himself might have averted if he had chosen. (*pp*) And particularly is this the case with that very species of mental unsoundness,—that of monomania, or moral insanity,—which is the cause of the greatest difficulty in the present connection. This is very admirably stated by Dr. Barlow in his powerful essay on this very point:

§ 262. "I have said that mental derangement and madness are different things; thus, a person may fancy he sees others around him who have no existence, as in the well known cases of Nicholai of Berlin and Dr. Bostoek. This is a certain degree of mental derangement while it lasts; but as both soon satisfied themselves that these personages were merely the creation of a morbid physical state, they were not mad. A man of less resolution would have shrunk from the labor of convincing himself that he was fooled by his senses, and would have insisted that the figures were real, and then he would have been mad. On these cases Dr. Connelly very justly remarks, 'Let any one reflect how Nicholai preserved his reason under such visionary and auditory delusions for so many months; and why the English physiologist, though visited with the images which are so well known to be familiar with mad people, never lost the use of his excellent understanding. The ready answer will be, they never believed in their real existence. But why did they not? And why does the madman believe in their real existence? The evidence of both is the same, the plain evidence of sense. The explanation must be this. The printer of Berlin and the physician in London retained the power of comparison: they compared the visual objects of delusion, with the impressions of other senses,' and the perceptions of other persons, and became convinced of their unreality. 'This is exactly what madmen cannot do. One form of madness consists in this very illusion of sense, but it is conjoined with the loss or defect of the comparing power, and the madman concludes that what is only an illusion, is a reality. But the illusion is not the madness.' Thus, according to the opinion of this very able judge, the affection of the brain which causes these delusions, *is not madness, but the want of power or resolution to examine them is.* Nothing, then, but an extent

will be found Mr. M. B. Sampson's "Criminal Jurisprudence considered in relation to cerebral organization." London, 1843. See also *ante*, § 79-85.

(*pp*) See *ante*, § 79-85, where this subject is discussed.

of disease, which destroys at once all possibility of reasoning, by annihilating, or entirely changing the structure of the organ, can make a man necessarily mad.”(q)

§ 263. “A man may labor under a mental delusion,” and yet be a responsible agent; and if sanity or insanity be in a great many instances the consequences of a greater or less resolution in exerting the power of reasoning still possessed, the same kind of motives which influence a man in common life, are still available, though they may require to be somewhat heightened. It is on this principle that the treatment of lunatics has been generally conducted. Fear, one of the lowest, but also one of the most general of instinctive emotions, has been called in to balance the delusions of sense, and excepting in cases where the structural disease is so extensive as to deprive the man of all power of connecting cause and effect, it has been found sufficient to curb violence, and enforce a certain degree of peaceable demeanor towards the attendants. And in this the insane person differs not from the cultivated man who is left at liberty, whose self control rarely amounts to more than the avoiding actions which would have unpleasant consequences to himself. Suppose an irascible man, incensed by a false report, which, however, he believes to be true; he seeks his supposed enemy, and horsewhips, or knocks him down; he does not assassinate, because he fears for his own life if he does; for it is clear that no feeling of duty has held his hand, or he would not have transgressed the laws both of God and man by thus revenging himself. The madman has the false report from his own senses; wherein do the two differ? Neither has employed means within his power to ascertain the truth, and both are aware that such vengeance is forbidden. I can see no distinction between them, save that the delusion of sense has, as a chemist would say, decomposed the character, and shown how much of the individual’s previous conduct was rational, and how much the result of mere animal instinct. It would be well for the world if the soidisant sane were sometimes to ask themselves how far their sanity would bear this test, and endeavor to acquire that rational self-command which nothing but the last extremity of cerebral disease could unseat. We do not descend from our high rank with impunity; and as when the matter has become organized, if the process of change, occasioned by the vital force, be impeded or arrested, the plant pines away and perishes; as, after the organs of locomotion have been superadded, the animal debarred from the use of them, languishes and becomes diseased; so man, if he give not full scope to the intellectual force, becomes subject to evils greater than animals ever know, because his nature is of a higher order.(r)

§ 264. “Neither do severe injuries from external causes, though, like paralysis, they might cause a loss of those faculties which connect man with the world about him, necessarily disconnect him with the world within, so as to place him beyond his own command.

“A case has been communicated to me illustrative of this. A young lad who had been carefully instructed in the principles of religion and virtue, by the clergyman of his parish, afterwards went to sea. When he was about twenty-two, he unfortunately fell from the mast upon his

(q) Barlow on Man’s Power over Himself, to Prevent or Control Insanity. London. W. Pickering, 1843. Phila. Lea & Blanchard, 1846.

(r) Ibid.

head on the deck, and the injury to the brain was such that he was discharged from the service in a state of imbecility, and sent home to his parish. He was then in possession of the use of his limbs and hearing; but articulation was apparently difficult to him, and collected thought, which should enable him to speak connectedly, still more so; his sight, too, was subject to a delusion which made him imagine he saw gold and silver coin strewed about on the ground; which, as was natural, he eagerly endeavored to pick up. He was now visited by the clergyman who had been the instructor of his youth, who in kind terms assured him he was under a false impression, and advised him to give no heed to what he imagined he saw. The poor young man thanked him, and promised to do as he desired, and for a time abstained from attempting to pick up the coin, but gradually the delusion became too strong for his resolution, and he recommenced. Yet, after every visit from his former instructor, he again controlled himself for a time; and, if he did not come, anxiously sought him at his own house. He died in a few months, but during the whole time was mild and submissive, seeming perfectly aware that his mind was disordered; and, like a child who distrusts his own power, seeking to throw himself on the guidance of one whose kindness he remembered, and whose character he respected. This man was suffering mental derangement from injury of the parts, but was not insane; for the faculties left him were rationally exercised.(s)

§ 265. "Cases of this kind have been considered by some as a peculiar type of insanity. By French authors it is entitled *manie sans délire*. Dr. Prichard styles it *instinctive madness*. I am inclined nevertheless to refer such deranged propensities in some instances to a peculiar and morbid state of sensation, and these will come under the head we are now considering, consequently the desire is not irresistible, though strong, for we see that it has been successfully resisted; in others I should refer it to the second class, under the head of 'Inefficiency of the intellectual force,' and then it depends on the resolution of the person so affected whether the morbid sensation shall be meditated on and indulged, and thus acquire fresh force, or whether by exciting other sensations, it shall be weakened and by degrees vanquished.

§ 266. "There is no greater error than to suppose that thinking about a propensity which ought not to be gratified, will conquer it; on the contrary, every hour of lonely thought gives it fresh force; but let the man plunge into business that must be attended to, or even a lighter occupation, so it be an engrossing one; and do this resolutely, however irksome it may at first appear, and the very repose thus given to the diseased part, if there be disease, by throwing the whole stress on other portions of the brain, will assist in effecting the cure.(t)

§ 267. "When a man has reached mature age without making any effort to render the brain subservient to the rational will, the fatigue and even pain consequent on the endeavor to obtain the mastery over it, is such, that few have resolution to undergo it voluntarily. Thus the man subsides more and more into the animal, and is at last guided only by those instinctive emotions which belong to the vital force merely. His passions assume a delirious violence, and he is only distinguished

(s) Barlow on Man's Power over Himself to Prevent or Control Insanity. London, W. Pickering. 1843. Philadelphia, Lea & Blanchard. 1846.

(t) Jbid.

from the brute from the greater skill with which he pursues their gratification. There is no *disease* of brain, but it has been left unexercised and ungoverned till it is as unmanageable as a limb that has been treated in the same way.

“Toes have been used for writing and other arts which are usually performed by fingers; they are *capable*, therefore, of such use, but those who have constantly worn shoes cannot direct one toe separately from the rest, as they can the fingers. Yet with much trouble this power of directing might be acquired. It is thus that the brain, unaccustomed to direction from the intellectual force, rebels against it, and if this latter fails to assert its sway, it may justly be termed inefficient. In a man thus animalized, the actions differ from those of his more spiritualized fellow men, who happily are more numerous; and when they find no such motive as *they* would consider a sufficient one for his conduct, they call him mad, by way of accounting for it. He commits a crime, and a plea of insanity is set up as a shelter from punishment. I will give an instance. It is recorded by the elder Pinel: ‘An only son, educated by a silly and indulgent mother, was accustomed to give way to all his passions without restraint. As he grew up, the violence of his temper became quite uncontrollable, and he was constantly involved in quarrels and law-suits. If an animal offended him, he instantly killed it; yet, when calm, he was quite reasonable, managed his large estate with propriety, and was even known to be beneficent to the poor; but one day, provoked to rage by a woman, who abused him, he threw her into a well. On his trial, so many witnesses deposed to the violence of his actions, that he was condemned to imprisonment in a mad-house.’ Yet any choleric man who does in his rage what he is sorry for afterwards, is as much insane as this man was; both are under the influence of the vital force. A shock to some nerve of sensation stimulates the sympathetic system; the circulation is hurried, and the blood flowing more rapidly through the brain, gives an unusual activity to the motor nerves, the movements are sudden and violent, the speech hurried, loud, and perhaps incoherent; but the intellectual force knows the source of these symptoms, and can curb them by resolute silence and inaction till the blood again flows at its usual pace; if it does not, the man, for a time, is in a state of mania, but is not the less responsible for having allowed himself to be so.

“Let us suppose another case; the thing is so constantly seen that every one could quote examples of it. A man unaccustomed to self-control, becomes occupied by one thought:—his ambition has been disappointed perhaps, or a law-suit has plagued him, or he has been much employed in some engrossing pursuit. Unable to regulate his thoughts at will, he finds the one which circumstances have made habitual, recur uncalled for. An effort would dismiss it, for every one who has studied, knows that he has had to dismiss many an intruding thought, and with some effort, too, if he wished to make progress in what he has undertaken; but this individual has never been accustomed to make any such effort, and he knows not how to free himself from the subject which thus haunts him. If it be an unpleasant one, he is wearied and worn by it; but every day that it is not driven off, it assumes a greater power, for the part of the brain thus brought into action is now by habit rendered



more fit for use than any other :—he has not resolution enough to free himself from his tormentor by a determined application to something else which would require all his attention ; he sits brooding over it, and, when life has thus become irksome, he strives to terminate his discomfort by suicide ; yet here is no structural disease ; and if the man could be persuaded to exert himself, he might be sane. I will give an instance. The master of a parish work-house, about thirty years of age, was subjected frequently to groundless suspicions of peculation. Being naturally a taciturn, low-spirited man, these false accusations which involved his character, and consequently the maintenance of his family, preyed upon his mind, and a profound melancholy was the result, attended by the usual symptomatic derangement of the digestive functions, and a constant apprehension that he had done something wrong, he did not know what. No assurance on the part of those who knew and esteemed him had any effect, and finally, after some months of melancholy, he attempted to destroy himself. He was then removed to St. Luke's hospital, whence, after a year had elapsed, he was discharged incurable. He was now placed in a private receptacle of the insane, and here suffered all the misery which at that time pauper lunatics were subjected to. He was visited at this place by a benevolent man, who, seeing his state, immediately ordered him to be removed into the gentlemen's apartments, and paid for his maintenance there. In a few months afterwards he was visited by the clergyman of his parish, who, on conversing with him, considered him sane. The man begged to be allowed to rejoin his wife and family, and the rector, after many difficulties and some threats to the parish authorities, succeeded in setting him free. The man from that time was able to maintain his family by his trade of shoemaking, for if ever a fit of melancholy came over him, a threat from his wife that he should be sent back to the mad-house was sufficient to engage him to make an effort to resume his cheerfulness ; and he remained to old age a sane man. Here the insanity had been merely *inefficiency of the intellectual force*. Placed in a situation of comparative ease, his mind had become calm ; the wish to return to his wife and family, and the hope of it, kept up by the visits of benevolent friends, did the rest : for, be it observed, during the whole time he never felt himself abandoned. The poor and the uneducated are the classes which most usually suffer from the *inefficiency* of the intellectual force : it is among the higher ranks usually that its *misdirection* is a source of insanity. Among these, more distant objects of pursuit keep the thoughts longer upon the stretch towards one point ; the organs of mechanical memory are strengthened, nay, even strained by the habit of learning much by rote, while the constant supply of learning ready-made, leaves no necessity for the more laborious processes of reasoning and comparison. Hence we not unfrequently find an elegant scholar, who can readily quote the words and opinions of others, unable himself to carry on a course of close argument, or to *prove* the truth of what he advances. Whoever has moved in society, knows that it is rare to meet with any one who can command his thoughts in conversation frequently to reject all that is not relevant to the subject, so as to keep on the chain of reasoning unbroken.(u)

(u) Barlow on Man's Power over Himself to Prevent or Control Insanity. London, W. Pickering. 1843. Philadelphia, Lea & Blanchard. 1846.

§ 268. "When the mind is thus exercised in remembering the opinions of others, thus unaccustomed accurately to examine its own, what wonder is it if it should become prepossessed with some irrational notion which cannot be removed by reasoning, because the individual man in his healthiest state had never chosen so to exercise his mind; or if, when a delusion of sense occurs, he should choose rather to act upon it as truth, than to examine into the grounds he has for believing it to be such. It is a melancholy fact that a great number of mankind are in this estate as regards the faculties most requisite to self-control, and depend far more on the accident of good health, than the exertion of their own intellectual power, for their sanity. I have heard of more than one instance of *hard livers*, as they were termed, who probably, in consequence of a slight affection of the brain from the unnatural stimulus of wine long kept up, became possessed with an opinion that they were slighted by one or more of their friends; and, resisting all reasoning on the subject, ended by destroying themselves. Yet, they were rational on other matters of importance, and therefore it is to be concluded, that, even on this point, they were capable of being rational also, had they chosen to make the exertion. It is recorded of Henri of Bourbon, son of the great Condé, that at times he imagined himself transformed into a dog, and would then bark violently. Once this notion seized him while in the king's presence; he then felt it needful for him to control himself, and he did so: for though he turned to the window, and made grimaces as if barking, he made no noise. Had the king's eye been upon him, it is probable that he would have avoided the grimaces also."(*v*)

§ 269. "The indulgence of violent emotions," observes Dr. Connolly, "is singularly detrimental to the human understanding, and it is to be presumed, that the unmeasured emotions of insanity are sometimes perpetuated in consequence of the disorder of brain originally induced by their violence. A man is at first only irritable, but gives way to his irritability. Whatever temporarily interferes with any bodily or mental function, reproduces the disposition to be irritated, and circumstances are never wanting to act upon this disposition till it becomes a disease. The state of the brain, or part of the brain, which is produced whenever the feeling of irritation is renewed, is more easily induced at each renewal, and concurs with the moral habit to bring on the paroxysm on every slight occasion—other vehement emotions and passions effect the same disorders of the mind."(*w*)

## (2.) *Prevention.*

§ 270. A very eminent American physician tells us, that "no argument should weigh, for a moment, with a court of justice, in favor of liberating such an individual (one subject to homicidal mania). The fact that life has been taken, should overbalance all motives to send such person into society again, while the delusions and estrangements

(*v*) Barlow on Man's Power over Himself to Prevent or Control Insanity. London. A. Pickering, 1843. Phila. Lea and Blanchard. 1846. See *ante*, 78-85.

(*w*) *Ibid.*

of insanity continue; and, we add, not until months, if not years, of peace, and freedom from excitement should have confirmed their entire release from this dangerous form of disease." "We recently attended (says the same authority) "an interesting trial on a subject of this nature in a neighboring county in this state. An habitually peaceful and worthy man was indicted for the most shocking murder of his wife, with an axe, and a horrible attempt upon the lives of his children with the same weapon. The facts were not denied, and his only defence was, that of insanity. He was acquitted, principally upon our testimony as to the fact of his being insane at the time the murder was committed, of which we have not the slightest doubt; but our astonishment was only exceeded by our alarm, when subsequently informed that bail had been admitted, and this afflicted, but truly dangerous man, was permitted to go at large. This ought not to be so. Science and humanity may interpose for the life of the homicide, but society should ever be protected from the effects of his dreadful disease. The lunatic asylum is their proper place; and it should be duly prepared for their reception and detention."(x)

§ 271. The man who, in an insane impulse, kills one man, is more than likely, under the same impulse, to kill another. And, indeed, the several facts of moral mania implies a chronic tendency to the particular crime. This was agreed on all sides in Hadfield's case where the point was first mooted: "For his own sake," said Lord Kenyon, "and for the sake of society at large, he must not be discharged, for this is a case which concerns every man of every station, from the king upon the throne, to the beggar at the gate—people of both sexes and all ages may, in an unfortunate, frantic hour, fall a sacrifice to this man, who is not under the guidance of sound reason, and therefore it is absolutely necessary, for the safety of society, that he should be properly disposed of, all mercy and humanity being shown to the unfortunate creature; but, for the sake of the community, he must somehow or other be taken care of, with all the attention and all the relief that can be afforded him." Hereupon the counsel for the Crown, and the counsel for the defendant, agreed that the safety of the community required that he should be taken care of. "It is laid down in some books," said the former, (Sir John Mitford, afterwards Lord Redesdale), "that by the common law, the judges of every court are competent to direct the confinement of a person under such circumstances." "That may be, Mr. Attorney-General," interposed Lord Kenyon, "but at present we can only remand him to the confinement he came from; but means will be used to confine him otherwise in a manner much better adapted to his situation." It was then suggested by Mr. Garrow (afterwards a Baron of the Exchequer) that "it would be for the benefit of posterity, if the jury would state in their verdict the grounds upon which they gave it, viz., that they acquit the prisoner of this charge, he appearing to them to have been under the influence of insanity at the time the act was committed. There would then," he added, "be a legal and sufficient reason for his confinement."(y) This recommendation was adopted by

(x) Dr. Woodward, cited in 4 *Journal of Psychological Medicine*, p. 469.

(y) Howell's *State Trials*, Vol. XXVII. p. 1354, et. seq. Suggestions for the future provision of Criminal Lunatics, by W. Charles Hood, M. D. London, 1854. pp. 16, 17.

the jury, who returned a verdict in these terms. Thus originated the form of verdict now commonly returned in cases of this description.

(3.) *Example.*

§ 272. The recorded cases are numerous in which the supposed irresponsibility of lunatics has led to the perpetration of crime by the insane. "They cannot hang him," was whispered about in the York lunatic asylum, when the firing of York Minster, by a supposed lunatic, was under consideration, "he is one of ourselves." And one of the most dangerous convicts in the Eastern Penitentiary,—one laboring under homicidal mania in its most inveterate shape,—was constantly expressing his disappointment at finding that notwithstanding his *acquittal* on ground of insanity, he was to be continued in prison. He had, in fact, supposed himself privileged by his disease to commit this particular crime. And even taking the strongest case,—that of the man who is possessed by a homicidal mania which equals in intensity the passion of particular classes of dogs for sheep's blood,—we will have strong ground to believe that such an instinct can be tutored. Monomanias, in fact, are epidemics, and spread precisely to the degree in which they are invested with sentimental celebrity. The Leipsic "Mädchen-Schneider," who when charged with gratifying a morbid sexual impulse by striking lancets in the arms of such young girls as he might meet in a crowded street, never exercised this propensity except when it was likely it would be undetected. Shame and the fear of punishment restrained him thus far, but it was quite otherwise when he became the object of a sentimental curiosity which visited him during his trial and imprisonment with the same attentions,—perhaps more,—which would have been paid to a Live Mermaid or the Siamese Twins. The monomania became an epidemic, and would have remained so had not an ignominious punishment been affixed.

(4.) *Reform.*

§ 273. To permit a monomaniac to go at large, will be to give fuel to his disease, as well as to supply it with victims—

"Mobilierate viget,  
Viresque acquirit cundo;"

And to nothing does this apply with greater force than that exaggerated state of the moral system, which has just been discussed. If the indulgence in passion, even in a healthy mind, tends, as has been just shown, to derangement, it will readily be seen that no recovery can be effected while the patient is permitted to run at large, exposed to all the irritating influences of unguarded society, and gathering a momentum for *coming* excesses from the very liberty he is allowed in the present.

§ 274. Dr. Mayo thus well illustrates the awkward position of insane criminals under the present administration of the law.—"It must be confessed that the conditional responsibility which the law, and, as I think, the reason of the case, attributes to the insane, is not easily

applicable in practice, either under lucid intervals, or under such other phases of the insane state, as might seem to justify it. The law will remain a dead letter, or will be continually ignored by the sympathies of judges, juries, and I may add, of medical witnesses, unless some practical distinction can be arranged, which may enable the responsible insane to undergo some lower degree of punishment than that inflicted on similar delinquents being of sound mind. The position of many such persons under capital charges, is at present anomalous. They are acquitted in defiance of the law, as laid down by the judges respecting M. Nughen's case, because the punishment at present appertaining to the offence would be too severe; and then, instead of being consigned to confinement in a gaol, as a secondary punishment, they are consigned to it in an asylum, as a place simply of detention. This becomes a scene of severe virtual punishment to some of them, of gratification to vanity and idleness to others; those, meanwhile, to whom it is a grievance, as they do not regard it in the light of a punishment, derive from it none of the preventive effects of punishment on future conduct, while the public, for the same reason, find it equally unproductive of good, as an example to persons of actually diseased mind, or to that large class of other persons who are drifting into disease under uncontrolled eccentricity." (z)

§ 275. It is impossible to carry out the proper disciplinary and remedial measures in a penitentiary common to the sane and insane. "I am satisfied of the fact," says Dr. Hood, "that Criminal Lunatics are more difficult to manage than other lunatics; there is more irritability of temper, and general restlessness about them; they are cognizant of the offences they have committed, and being under the impression that they will never recover their liberty, they are less disposed to be contented or happy. They are also conscious that they are separated into, and form a distinct class of patients, and this very circumstance establishes a species of fraternity among them; for they are in constant communication with each other, and their curiosity is naturally excited to ascertain the circumstances connected with every new arrival. They thus soon become acquainted with each other's history, which is often the cause of much quarreling and mutual recrimination; the better class of patients are unhappy at being associated with the inferior order—criminals whose manners and language are habitually of the most revolting description. Hence, I conclude, that the fundamental principle upon which we should proceed, in providing for the safe custody, maintenance, and medical care\* of our Criminal Lunatics, should be that of establishing a certain classification among them, founded upon the degrees, or nature of the crimes which they may have committed. This principal conceded, we have then to consider the expediency or inexpediency of organizing a State Lunatic Asylum for their common reception; the possibility, or impossibility, of each county providing adequate accommodation in existing asylums for its own Criminal Lunatics; and whether arrangements might not be made in prisons, and houses of correction, for the medical treatment of such

(z) Mayo on Medical Testimony in Lunacy, pp. 50, 51, 52.

prisoners as may, while undergoing imprisonment or penal servitude, become insane.”<sup>(a)</sup>

On the other hand, the confinement of an insane criminal in an ordinary lunatic asylum, is beset with still greater difficulties. “It is,” says Dr. Hood, “not only annoying to other patients, but greatly disturbs the ordinary discipline of the establishment; for be it observed, lunatics, whether criminal or non-criminal, are capable of some degree of reasoning; and their conscious incapacity of enjoying this faculty to its full extent, often recoils painfully upon their feelings, and becomes, in itself, a source of irritation. In providing, indeed, for the safe custody, and the management of the insane of all classes, we should proceed upon the same principles as if we were legislating for professedly sane persons; because, the mind is never totally eclipsed, there is always some lingering ray of light which the intact reflection may seize upon with instinctive truthfulness.”<sup>(b)</sup>

§ 276. If the views taken in the preceding sections be sound,—if, in the first place, there are inherent difficulties in the way of making insanity a ground of defence on the trial of a man, who, on this hypothesis is psychologically incapable of either tendering or preparing any such issue; <sup>(c)</sup> if, in the second place, the doctrine of instinctive

<sup>(a)</sup> Suggestions for the future provision of Criminal Lunatics, by W. Charles Hood, M. D. London, 1854 p. 28–29.

<sup>(b)</sup> *Ibid.* pp. 27, 28.

<sup>(c)</sup> The absurdity of our present practice, in making insanity a personal defence, to be taken or rejected by the alleged lunatic in the exercise of a volition which the very nature of the defence supposes him incapable of exercising, is fully exhibited by the following case:—

SUPREME COURT OF THE STATE OF LOUISIANA.

*The Court met Monday, April 9th, 1855.*

Present, their Honors Thomas Slidell, Chief Justice; Cornelius Voorhies, A. M. Buchanan, A. N. Ogden, H. M. Spafford, associate justices.

3838.	The State of Louisiana, Appellee,	}	Appear from 1st District Court, New Orleans.
	<i>vs.</i>		
	James Patton, Appellant.		

Spafford, Justice, delivered the opinion of the Court.

Upon the trial of James Patton for the murder of Walter Turnbull, the following bill of exceptions was taken by the prisoner’s counsel:

Be it remembered, that on the trial of this cause, on the 20th day of March, 1854, after the evidence on the part of the State was closed, and when the counsel of the prisoner were proceeding to prove by the evidence of witnesses the insanity of the said prisoner, at the time of the killing set forth on the indictment, and a long time before, and ever since the said killing, the said prisoner arose and objected to and repudiated the said defence, and insisted upon discharging his counsel, and submitting his case to the jury without any further evidence or action of his counsel in his defence; his counsel opposed and remonstrated against the prisoner’s being permitted to do so, alleging that they were prepared to prove the defence by clear and irresistible testimony; but the court overruled the objection of the said counsel, and permitted the prisoner to discharge his counsel, and refused to hear them further on his defence, and gave the case to the jury without any further evidence or pleading on his behalf; to all which opinion and ruling of said court the defendant’s said counsel excepts, and prays his exceptions may be signed, &c.

(Signed) John B. Robertson, *Judge.*

There was a verdict of “guilty without capital punishment”—and, after the former counsel had in the quality of *amici curiæ* attempted to obtain a new trial and arrest of judgment without success, the prisoner was sentenced to hard labor for life in the penitentiary.

or moral mania be allowed in legal theory the sweep which is asserted for it by medical experts, and which in this country at least is conceded

From this judgment the present appeal has been taken :—

The sanity or insanity of the prisoner is a matter of fact; the admissibility of evidence to establish his insanity, under the circumstances detailed in the bill of exceptions, is a matter of law, and the only matter which the constitution authorizes this tribunal to decide.

The case is so extraordinary in its circumstances that we are left without the aid of precedents.

In support of the ruling of the district judge, it has been urged that every man is presumed to be sane until the contrary appears, and that a person on trial for an alleged offence has a constitutional right to discharge his counsel at any moment, to repudiate their action on the spot, and to be heard by himself; hence the inference is deduced that the judge could not have admitted the evidence, against the protest of the prisoner, without reversing the ordinary presumption, and presuming insanity.

In criminal trials, it is important to keep ever in mind the distinction between law and fact, between the functions of a judge and those of a jury.

It was for the jury, and the jury alone, to determine whether there was insanity or not, after hearing the evidence and the instructions of the Court as to the principles of law applicable to the case.

By receiving the proffered evidence for what it might be worth, the judge would have decided no question of fact; he would merely have told the jury, "the law permits you to hear and weigh this evidence; whether it proves any thing it is for you to say."

By rejecting it, he deprived the jury of some of the means of arriving at an enlightened conclusion upon a vital point peculiarly within their province, and, in effect decided himself, and without the aid of all the evidence within his reach, that the prisoner was sane.

It is idle to say that the legal presumption, and the prisoner's own declarations, appearance and conduct on the trial, established his sanity to the satisfaction of both judge and jury;—for presumption may be overthrown, declarations may be unfounded, and conduct and appearances may be deceitful; and the prisoner's counsel, sworn officers of the court, with their professional character at stake upon the loyalty of their conduct, alleged that they stood there prepared to prove by what they deemed clear and irresistible testimony that the accused was insane at the time of the homicide, long before, and ever since; so that the sole inquiry now is, not whether they or the Court were right as to the fact of sanity upon which we can have no opinion, but, whether they should have been allowed to put the testimony they had at hand before the jury, to be weighed with the counter evidence.

If the prisoner was insane at the time of the trial, as counsel offered to prove, he was incompetent to conduct his own defence unaided, to discharge his counsel, or to waive a right.

Upon the supposition that the counsel were mistaken in regard to the weight of the evidence they wished to offer, as they may have been, still its introduction could do the prisoner no harm, nor could it estop him from any other defence he might choose to make on his own account; neither could it prejudice the State, for it is to be presumed that the jury would have given the testimony its proper weight; if, on the other hand, the counsel were not mistaken as to the legal effect of this evidence, the consequences of its rejection would be deplorable indeed.

The overruling necessity of the case seems to demand that, whenever a previous soundness of mind and consequent accountability for his acts are in question, the rule that he may control or discharge his counsel, at pleasure, should be so far relaxed as to permit them to offer evidence on those points, even against his will. Considering, therefore, that it would be more in accordance with sound legal principles and with the humane spirit which pervades even the criminal law, to allow the rejected testimony to go before the jury, the cause must be remanded for that purpose.

It was said in argument, on behalf of the State, that the alleged insanity was, at most, but a monomania upon another topic, which could not exempt the prisoner from responsibility for the homicide.

The judge will instruct the jury in regard to the principles of law which govern this subject, when all the facts shall have been heard.—At present, the discussion is premature.

It is therefore ordered, adjudged and decreed that the judgment of the Court below be reversed, the verdict of the jury set aside, and the cause remanded for a new trial according to law.

to it by the Courts; if, in the third place, it be right that the present system of confinement of insane criminals be remodelled,—then it will become necessary for those to whom the work of legislation is committed to amend the law so as to reserve the question of insanity to be determined by a competent tribunal *after* a conviction of the fact of guilt. For the following undeniable evils result from the present system:

(a.) A tribunal of, at least, but secondary competency is charged with the determination of the most difficult and yet most momentous question to which human observation can be applied. (d)

(b.) A subject is introduced into the question of guilt or innocence, as to which no fixed judicial rules can be laid down, and which really concerns only the character and the extent of punishment.

(c.) A fearful confusion takes place between the *sane* convict; the *insane* malignant convict, who requires discipline and is, in some degree, morally responsible; the *innocent* insane convict; (e) and the lunatic, who is in confinement but is not charged with crime: for all of whom there is in some jurisdictions but *one* common method of discipline provided, viz: that of the penitentiary; in others, but *two*, that of the penitentiary and of the ordinary lunatic asylum. The result of this is acquittals in some cases, when there should be convictions; convictions in other cases when there should be acquittals, and in almost all cases an erroneous system of punishment.

The remedy for these difficulties is one to which we must come sooner or later, and for which the common law has been from the beginning always striving, and yet always losing from almost its very grasp. It is to confine the inquiry before the court and jury to the mere *factum* of the commission of the offence; reserving the question of treatment to be determined by a special commission of experts, to be appointed for the purpose of examining convicts alleged to be insane. The proposition to be put by the court to the jury, under such circumstances, is not, "Was the defendant capable of judging between right and wrong," a proposition which no jury can determine, but, "Did he," as a matter of fact, "commit the specific act charged." For whether he committed it as sane or insane,

(d) Dr. Hood very justly remarks, "All human tribunals are fallible, and how, when this plea of insanity is raised, can we unveil the mind of the accused, and determine where responsibility ends and irresponsibility begins? We may appreciate outward and visible signs but we have no *mentometer*, (if I may be allowed to coin a word) which will indicate the thoughts that may be passing through the mind. In medical jurisprudence the diagnosis between sanity and insanity is, in many cases, infinitely difficult; and it is upon this account that specialists in this branch of our profession so often come into collision with members of the bar, and draw down upon themselves occasionally animadversions from the judges on the bench. There would be no difference of opinion between the two learned professions if we could arrive at any fixed principles by which we could explain the silent operations of the mind; but this, so far as insanity is concerned, is as impossible in law as it is in medicine. We may adjudicate upon the overt act, but the motive which dictated it will very often elude the most searching examination. But this happens continually in sane as well insane life." Suggestions for the future Provision of Criminal Lunatics, by W. C. Hood, M. D. London, 1854.

And we may add to this the testimony of a great poet on a kindred point:

"May it please your Excellency, your thief looks  
Exactly like the rest, or rather better;  
'Tis only at the bar *or in the dungeon*  
That wise men know your felon by his features."

(e) See as to distinction between these, *ante*, § 232-251.



the result is, if the offence in point of law be indictable, that the safety of society requires that he should be placed in seclusion for such a period as will promote the joint ends of personal reformation and the preservation of the well-being of the community at large. If he be guilty without the palliation of mental infirmity, certainly the severest penal code—with the single qualification of cases of murder in the first degree,—can ask nothing more than this. If, on the other hand, he was at the time laboring under mental derangement, in no other way can the extent of his responsibility be accurately determined, and the proper degree of discipline adjusted. For this great question of sanity or insanity can really be only determined by those to whose daily and hourly care the convict is committed, and who have thus full opportunity of inquiring into his antecedent as well as his present condition. “Thus,” to adopt the language of a late very intelligent commentator,<sup>(f)</sup> “except as regards the curative course to be adopted, on our view of the case, the subtle line of distinction which there have been so many abortive attempts to draw, between criminal and non-criminal lunatics is of no practical importance, and the unavailing search, unless as a matter of metaphysical speculation, may be abandoned as unnecessary. In either case, the person concerned, whether called a lunatic, a criminal lunatic, or an ordinary criminal, should be so placed as to put it out of his power to inflict further injury, and to afford the most likely means for his cure.” And thus, also, not only will the sanctions of human life and property be protected from the recurrence of those monstrous acquittals, by which, under the plea of insanity, the most dangerous criminals are suffered to run at large, but the interests of humanity will be subserved by a proper discipline, as well as a just classification, of those whose accountability is diminished or destroyed.

(f) XXI. London Law Review, 364.

