PAPERS

READ BEFORE THE

MEDICO-LEGAL SOCIETY

OF NEW YORK,

FROM ITS ORGANIZATION.

FIRST SERIES.

REVISED EDITION.

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PREFACE.

THE publication of all the papers read before the Medico-Legal Society of New York had for many years been discussed and proposed in various forms. At the meeting of the Executive Committee of the Society in December, 1872, the President was authorized to name a committee of three to propose a plan and to ascertain all the details relating to such publication, and to make a report thereon. This Committee consisted of WILLIAM A. HAMMOND, M. D., R. S. GUERNSEY, Esq., and STEPHEN ROGERS, M. D.

At the following January meeting of the Executive Committee of the Society, Mr. R. S. GUERNSEY, the Chairman of the Publication Committee, reported the plan, which was unanimously adopted, under which this volume now appears. Many of the papers which it contains have been published in different forms, and in various newspapers, magazines, and reviews, and some have never been published. These were all collected, and are arranged in a chronological order, as read before the Society, and some of them are now published for the first time.

Each of the Papers contained in this volume has been *revised by the individual author of it expressly for this publication*, which renders this collection one of increased value, and, while it will be found particularly useful to the Legal and Medical professions, it cannot fail to be of interest to the general public.

NEW YORK, *November* 2, 1874.

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INTRODUCTION.

The "New York Medico-Legal Society" has resolved to present to the public, in the form of bound volumes, the set papers which have been and which may in future be read before it. With this, the first one, it has appeared appropriate that an account of the causes which gave origin to, and the circumstances which attended the beginning of the Society be presented. All institutions have a real or supposed necessity for their existence, and are required to fill an individual or public demand. Inventions without useful applicability are short-lived. This was not the case with the New York Medico-Legal Society. Up to the time of its organization legal medicine had not, in this city or State, an association, nor a college, nor any institution which could be called its own. It was, therefore, as is believed, the offspring of a public demand, which it has now supplied. The circumstances attending its beginning, and which chiefly contributed to its development, can hardly fail to be of interest to any one who reads this book. At least, so it has been thought, hence a limited space is here allowed to their detail.

Few public offices have been more disparaged than that of coroner. While it is not proposed to protest against justified criticism — and there has beyond a doubt been much of that—it is justice to that department of the New York city government that this occasion be taken to state

that two of our scientific societies unquestionably originated in the coroner's department. The first in chronological order is the "*New York Pathological Society*," which was started about 1844 by some of the deputy coroners; (Drs. Goldsmith and J. C. Peters). The second, in the same order, is the "*New York Medico-Legal Society*," whose early history we proceed to concisely sketch as a preface to this volume of papers read before it.

The precise date of the first suggestion looking towards the organization of this Society is not preserved, but there has not been a single doubt expressed, to our knowledge, that Wooster Beach, Jr., M. D., originated the idea. Dr. Beach became a deputy coroner about the year 1855, and, after an experience of five or six years (according to Dr. T. C. Finnell, who, in his remarks at the first annual dinner of the Society, places it in 1860), introduced the subject, in a conversational way, to his colleagues in the coroner's office, and soon after went, in company with them, to Dr. Finnell's office to confer with him upon the scheme. It would appear, however, that no material advance in the project was effected till some years later. Dr. Beach, who is as remarkable for writing little, as he is for originating much, says, in a letter: "Before we organized as a society, two of the assistant coroners, with myself, had occasional conversations," etc. These conversations must, if Dr. Finnell's dates are correct, have been carried on through years, for no definite organization took place till the summer of 1867. Up to that time, writes Dr. Beach, "we often discussed the pathological and medical points of the cases that came to our notice as coroners, quite to our satisfaction, but we not infrequently had occasion to regret that there was no lawyer among us to discuss the legal points. Out of this want sprang

my idea that our discussions should be where lawyers might unite with us. This idea naturally suggested an increase in the subjects, and a much broader field of enquiry than the coroner's autopsies would afford, and of course an organization considerably numerous, to conduct those enquiries and discussions; in short, a society of lawyers and physicians occurred to me. Several gentlemen of the medical and legal profession to whom I mentioned the idea heartily approved of it, and *soon* after, the nucleus of the New York Medico-Legal Society was formed." The italics are our own, indicating that in fact very little was done till about the time of the first formal meeting. That meeting was held, pursuant to an arrangement or call, at the residence of Simeon N. Leo, M. D., 228 West 21st street, on the 4th of June, 1867. It was not a success, according to the minutes, for so few who had been called, came, it was deemed advisable to postpone the work of organization of a society till a larger number could be assembled. An adjournment of one week was agreed upon, after electing Dr. Beach temporary chairman, and Dr. Simeon N. Leo temporary secretary. At the adjourned meeting, which was held on the 11th of June, 1867, at the same place, very important business in the way of a permanent organization was transacted.

First, the coming Society was named.

Dr. Beach, the Chairman, announced that, as first in order. The minutes state that the first name proposed was, *Academy or School of Pathology and Forensic Medicine.* The second one added to this, *and Therapeutics.* The third one proposed was, *Society of Pathology and Forensic Medicine.* The fourth one, and the one it now bears, was proposed by J. J. O'Dea, M. D., then of this city, now of Staten Island.

To Dr. O'Dea then belongs the honor of christening that

infant Society, to whose growth and rapid development he has been ever since one of its most constant, talented, and liberal contributors. This having been done, the next in order was the appointment of a committee to prepare the constitution and by-laws for its government. This committee was composed of Dr. O'Dea, *Chairman*, Dr. John Beach, and Dr. Wooster Beach. No lawyers are mentioned. At a meeting held on the 2d of July, 1867, this committee presented the first draft of constitution and by-laws, which, after little discussion and some slight alterations, was adopted. A comparison of the original constitution and by-laws with those now in force, shows that by subsequent acts of the Society, induced, doubtless, by the demands of its growth and changing conditions, very extensive and radical amendments have been adopted. Some of the provisions of that original document seem worthy of historic note, as exhibiting the zeal and energy of the pioneers of our Society. Their ideas were in quite a military vein. For example: the President was empowered to publicly "reprimand any member for misconduct, and for refusal or neglect to comply with any rule of the Society." The order of business required the calling of the roll before reading the minutes of preceding meeting, the absentees noted, so that another section of the by-laws might be enforced; viz., any member absent from two consecutive meetings, without presenting satisfactory excuse therefor to the President, was subject to a fine of twenty-five cents. No provision was made for the reading of essays or papers before the Society; but instead thereof, we find an almost compulsory requirement on the members to present post-mortem specimens, clearly showing that the field of labor before the Society was not yet comprehended. For example: section second of chapter fifth of the constitution requires that the members "shall use all legitimate means to procure autopsies,

describe the result of each, and shall bring before the Society as many pathological specimens as possible."

This looked so much like a second pathological society, that, at one of the early meetings, Dr. Wooster Beach, the chairman, felt obliged to remark, that this Society "was intended not to interfere in any way with the old Pathological Society, but to serve as a sort of auxiliary to it."

His controlling idea was, that the medico-legal bearings of pathological specimens presented to this Society, should alone receive its attention. He personally informs us, that it was his practice, during his presidency, to remind the members of the Society that to this idea and object, the pathological contributions to it should be limited.

It, however, seems by the statements found in the minutes, that for many months after the primary meetings, it was little else than a pathological society. So thoroughly organic was this idea among the members, and so persistent was the propensity to make the meetings places for pathological exhibition, that long after the Society had grown to such proportions that its meetings were attended by large numbers of legal gentlemen, as well as ladies, specimens of disgusting mien, and totally devoid of medico-legal interest, were continually passed at the meetings, like contribution-plates, from seat to seat, under the noses of the audience. It finally became necessary, in order to avoid this infliction upon the then mixed assembly at the meetings, to restrict this exhibition of specimens to those *possessing medico-legal interest*, and to place them in such locality that those present desirous of so doing could go and examine them.

By the adoption of the constitution and by-laws abovementioned, the term of office in the Society was limited to one year, commencing at the first regular meeting in October, which in those days was the first Tuesday, the meetings then

being held every week, not as now once a month. This frequency of the meetings soon became oppressive, as it would seem, for we find that at a meeting held on the 3d of September, 1867, a previously appointed committee reported on the subject of the time and the places of holding the meetings, in favor of having them once in *two* weeks, and that they be held at the member's houses, and not at the house of a single one. The same report also shows that the system of fining for non-attendance did not work satisfactorily. Instead of it, it was recommended and adopted "that should any person duly elected member be absent from the meetings for six consecutive months after his election, his name shall be erased from the roll, unless, after due notification of the fact, he render satisfactory excuse for such absence." Although the minutes do not so state, it is presumable that this law was to apply to persons who had attended meetings after their election. The roll-call, however, was still continued, adding a second call the last thing before adjournment, so as to give any member the credit of being present, even though late. At the same meeting notice was given that proposed amendments to the constitution would be offered at the next meeting, showing that at this early date, the Society began to discover new wants. The only subject involving lawyers which was discussed, under the preliminary organization, was that of "The duties of Medical Witnesses," and occurred at the meetings in September, 1867, at which the minutes do not show that any lawyer appeared. So far as the minutes inform us, the drift of the discussion was in the direction of the duties of medical witnesses to themselves, and to other doctors similarly situated, and not their duties towards the public as the exponents of scientific truths.

The first annual election under the constitution adopted in June, as heretofore stated, as held the first Tuesday of

October, 1867, resulting in the election of Dr. T. C. Finnell, President; Robert Newman and John Beach, Vice-Presidents.

This was a grateful and well-deserved compliment to Dr. Finnell, who had been, from the very beginning, an enthusiastic and zealous supporter and fosterer of Dr. Beach's project, and, from long experience in the executive management of medical societies, was eminently qualified for the position. Dr. O'Dea was elected Secretary, for which important position he had shown his fitness during the preceding temporary organization. Though the available minutes do not state when, it is evident that some time before this election, or soon after it, there was an amendment of the constitution, for two vice-presidents were that year (1867 and 1868) registered, and a corresponding secretary—Dr. J. F. Chauveau having been elected to the latter office—that is to say, one vice-president and a corresponding secretary added to the original list of officers.

It is a matter of historic importance, as well as of justice, to here state, that for many months after its temporary organization, indeed up to the time of its first election under the constitution, the meetings of the Society had been held at Dr. Leo's residence. This marked hospitality of Dr. Leo was the subject of a formal vote of thanks at the meeting of September 3, 1867; the exact terms used to express those thanks are, that the "Society consider Dr. Leo's long-continued hospitality worthy of its gratitude." From that date the Society met at various places, sometimes at the residences of the members, and at other times in the coroner's office, City Hall.

Its legal status from the October election (1867), to June, 1868, was that of a voluntary society. On the 20th of June, 1868, it filed its certificate of incorporation in due form, and

in accordance with the general act of the State of New York relative to the incorporation of scientific and other societies, and became an incorporated society.* This was the chief act distinguishing Dr. Finnell's first year of the presidency, and for which the Society is indebted, as we are personally informed, to Dr. Bahan, one of the incorporators. During this year also the almost purely pathological character of the Society began very markedly to give way to the reading and to the discussion of papers upon subjects involving legal questions. On the 22d of the same month of the election we find Dr. O'Dea recorded as reading a paper on "Malpractice." Later in the year one by Dr. Terry on

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* The following is the certificate of incorporation filed in the office of the Secretary of State, at the city of Albany, on the 20th day of June, 1868:

STATE OF NEW YORK.
CITY AND COUNTY OF NEW YORK. } ss. :

June 6th, 1868.

We, the undersigned, do hereby associate ourselves together, and form a society, pursuant to the provisions of an act of the Legislature of the State of New York, entitled "Of Benevolent, Charitable, Scientific, and Missionary Societies," and, in compliance with the requirements of said act, we do hereby certify as follows:

First.—The name and title by which said Society shall be known in law is "The Medico-Legal Society."

Second.—The object for which said Society is formed is the acquisition by its members of a knowledge of Medical Jurisprudence by investigation and debate, showing the application of medical science to numerous of the cases daily presenting themselves before legal tribunals.

Third.—The number of trustees of such Society, to manage the same, shall be six, and the names of such trustees for the first year of its existence are Thomas C. Finnell, Robert Newman, James J. O'Dea, Thomas S. Bahan, John Beach, and David McAdam, all of whom are of full age and citizens of the United States.

Fourth.—The place where the business of said Society shall be conducted is the City, County, and State of New York.

"Infanticide," one by Dr. Stirling on "Evidences of Criminal Abortion," and early in 1868 one on "Rape," by J. F. Miller, Esq. So far as the minutes inform us, Mr. Miller is the first lawyer who took an active part in the proceedings of the Society. When the first lawyers were elected to membership in the Society, the available minutes do not inform us, but certainly no such election is noted before the first election under the constitution, that is to say, before the first Tuesday in October, 1867, or during Dr. Beach's chairmanship, notwithstanding the fact that he originated the idea of including lawyers among its members. There, however, must have been efficient efforts made to increase the members from both professions from the beginning of Dr. Finnell's presidency, for it appears that early in 1868 the Society numbered 38 physicians and 9 lawyers, the more prominent of the latter being J. F. Miller, John H. Anthon, and Francis Tillou. From this date the progress of the Society has been a matter of published record in the cotemporaneous medical and law journals, and need not be repeated here; indeed the following collection of papers, read before it, will give the best possible idea of the character and extent of its work. From a very modest but zealous nucleus, as Dr. Beach termed it, it has grown, during the seven years of its existence, so as to rank among our *large* medical societies of New York city. According to Dr. Finnell, its historian,* the Society has a claim to the distinction of being the first of its kind to organize in the world. As respects the Medico-Legal Society of Paris, the only other one of whose existence we have knowledge, this is certainly true. The Paris Society was organized on the 10th of February, 1868; ours July 2d, 1867, and soon after the two Societies instituted an inter-correspond-

* Medico-Legal Society dinner already quoted.

ence. We subjoin, in form of note, the first two letters of this correspondence as interesting historic items.*

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* NEW YORK,
May 5th, 1868.

To the "Société de Médecine Legal de Paris."

SIR:—The "New York Medico-Legal Society," having been informed of the organization of "La Société de Médecine Legal de Paris," at its last meeting, held on the 23d inst., ordered, that a letter be addressed to you, expressing the pleasure we feel in knowing that a Society has been organized in France by the same name, and for the same objects as our own; and the happiness it will afford us to correspond with you on interesting points of medical jurisprudence; to receive the published reports of your proceedings, and to send you ours. Paris and New York, grand commercial and scientific centers, have long needed medico-legal societies. We greet you cordially in the hope that we labor unitedly for the promotion of Science and the vindication of Truth. This Society has had the pleasure of availing itself of this opportunity to express its high respect for your President, A. Devergie—long known to us as an author on legal medicine and a faithful laborer in this department of science—by unanimously electing him honorary member.

With assurances of sincere respect,

I am, yours very truly,
JEAN F. CHAUVEAU, M.D.,
Corresponding Secretary,
N. Y. Medico-Legal Society.

T. C. FINNELL, M.D.,
President.

PARIS,
June 19, 1868.

To the President of the Medico-Legal Society of New York.

SIR:—The *Société de Médecine Legal de Paris*, at its regular meeting of June 11th, 1868, received, with great pleasure and satisfaction, your letter of June 5th inst., conveying the kind words of congratulation and fellowship of the New York Medico-Legal Society, and suggesting an interchange of published transactions.

In behalf of this Society I reply that it will be happy to send to you, at

Having no knowledge which enables us to gainsay this statement, we accept it as fact, and most sincerely hope that the professions to which it pertains will sustain it so as to constitute it first also in science and legal learning. S. R.

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the end of each year, the report of its labors, which report will be published in the "*Annals of Hygiene and Legal Medicine*," by Ballière & Son. This Society avails itself of the opportunity to say, that it will always gladly confer with that of New York when occasion offers. Our Society was especially gratified by the expression of esteem which you gave for our President, M. A. Devergie, by electing him honorary member; and, as a reciprocation of this courtesy, our Society has conferred the title of honorary membership on Dr. T. C. Finnell, your President. It has also conferred the title of Foreign Corresponding Member on Dr. Jean F. Chauveau, your Corresponding Secretary.

Happy to be the medium of this interchange of sentiments between the Societies,

I am, very respectfully, yours,

T. GALLARD,

Secretary of the Société de Médecine Legal de Paris.

A. DEVERGIE,

President.

THE LAW

IN REFERENCE TO

SUICIDE AND INTEMPERANCE

IN

LIFE INSURANCE.

By WILLIAM SHRADY, LL.B.*

Life Insurance is usually effected in this country in a way quite similar to that of fire insurance by our mutual companies; that is, an application must be first made by the insured; and to this application queries are annexed by the insurers, which relate with great minuteness and detail to every topic which can affect the probability of life. These must be answered fully; and if the insured be other than the life insured, there are usually questions for each of them. In some cases, there are also some questions asked, which should be answered by the physician of the life insured, and others by his friends or relatives; or other means are provided to have the evidence of the physician and friends. Every company has a different way of putting their questions, and it is not worth my while here to speak of them in detail. The rules, as to the obligation of answering them, and as to the sufficiency of the answers, must be the same in life insurance as in fire insurance; or rather must rest upon the same principles.

Life insurance policies always contain certain restrictions or limitations as to place; the life insured are not permitted to go beyond certain limits or certain places. The exception,

* Read before the Society, Nov. 11, 1869.

however, which has created perhaps the most discussion, is that with regard to self-inflicted death, which avoids the policy. This self-destruction may be voluntary and wrongful, or it may result from disease or insanity, for which the person destroying himself should not be held responsible for the act committed. If a policy is accepted, which expressly declares that should the insured die by his own hands, whether willfully, knowingly, or intentionally, or otherwise, there is no doubt that this clause would have its full and literal effect. This, however, becomes a difficult question to solve, where the words "die by his own hands" are used, as a great many cases might arise which would come within that condition.

In Borradaile *v.* Hunter, 5 Manning & Granger, 639, the policy contained a proviso, that in case "the assured should die by his own hands, or by the hands of justice, or in consequence of a duel," the policy should be void. The assured threw himself from Vauxhall Bridge into the Thames, and was drowned. In a suit on the policy, Erskine, J., instructed the jury "that if the assured, by his own act, intentionally destroyed his own life, and that he was not only conscious of the probable consequences of the act, but did it for the express purpose of destroying himself voluntarily, having at the time sufficient mind to will to destroy his life, the case would be brought within the condition of the policy; but if he was not in a state of mind to know the consequences of the act, then it would not come within the condition." The jury found that the assured "threw himself from the bridge with the intention of destroying his life; but at the time of committing the act he was not capable of judging between right and wrong." It was held (Tindall, J., dissenting) that the policy was avoided, as the proviso included all acts of intentional self-destruction, and was not limited by the accompanying proviso to acts of felonious suicide.

Erskine, J., said: "Looking simply at that branch of the proviso upon which the issue was raised, it seems to me that the only qualification that a liberal interpretation of the words, with reference to the nature of the contract, requires,

is, that the act of self-destruction should be the voluntary and wilful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself. It appears, indeed, to me that, excluding for the present the consideration of the immediate context of the words in question, the fair inference to be drawn from the nature of the contract would be, that the parties intended to include all wilful acts of self-destruction, whatever might be the moral responsibility of the assured at the time; for, although the probable results of bodily disease, producing death by physical means, may be the fair subjects of calculation, the consequences of mental disorder, whether produced by bodily disease, by external circumstances, or by corrupted principle, are equally beyond the reach of any reasonable estimate. And reasons might be suggested why those who have the direction of insurance offices should not choose to undertake the risk of such consequences even in cases of clear and undoubted insanity. It is well known that the conduct of insane patients is, in some degree, under the control of their hopes and fears, and that especially their affection for others often exercises a sway over their minds where fear of death or of personal suffering might have no influence; and insurers might well desire not to part with this restraint upon the mind and conduct of the assured, nor to release from all pecuniary interest in the continuance of the life of the assured, those on whose watchfulness its preservation might depend; and they might most reasonably desire to exclude from all questions between themselves and the representatives of the assured, the topic of criminality so likely to excite the compassionate prejudices of a jury which were most powerfully appealed to on the trial of this cause."

Ch. J. Tindall held that the terms "dying by his own hands"

being associated with the terms "dying by the hands of justice, or in consequence of a duel," which last cases designated criminal acts, on the principle of *noscitur a sociis* should be interpreted as meaning self-destruction.

It will be observed the majority of the Court in the above case exclude from the condition cases of mere accident, and of insanity extending to unconsciousness of the act done or of its physical consequences.

In Clift *v.* Schwabe, 3 C. B., 437, which was determined in the Exchequer Chamber in 1846, where the condition was that the policy should be void if the life insured "should commit suicide," it was held by a majority of the Court (Rolfe, Baron; Paterson, J.; Alderson, B.; Parke, B.) that the terms of the condition included all acts of voluntary self-destruction, whether he was or was not at the time a responsible moral agent. Pollock, C. B., and Wightman, J., dissented.*

But the proper way no doubt is to look at the probable intention of the insurers who seem only to exclude all criminal acts; all other risks they are willing to take. The following decisions show in what light the Courts regard criminal acts of the insured, and suicide or death by one's own hands would only be within the restriction of the policy where it was voluntary and wrongful.

In Fauntleroy's case there was no clause in the policy in regard to death by the hands of justice, but the life assured was convicted of forgery, sentenced, and executed. The policy was sustained at the Rolls, but upon appeal to the House of Lords the decree was reversed.

Lord Chancellor Lyndhurst held that a policy expressly insuring against such a risk would be void on the plainest principles of public policy, as taking away one of the restraints operating on the minds of men against the commission of crime, namely, the interest we have in the welfare and prosperity of our connections, and effect could not be given to it

* So held also in Dufaur *v.* Professional Life Assurance Company, 25 Beavins, 599.

on an event which, if expressed in terms, would have rendered the policy, as far as that condition went at least, altogether void. Where a policy provided that it should be void if the life assured "should die in the known violation of a law of the State," it was held that to avoid it, the killing of the life assured, in an altercation, must have been justifiable or excusable homicide, and not merely under circumstances which would make the slayer guilty of manslaughter.*

Where a slave refused to surrender to patrols, and, attempting to escape, was shot by one of them in the right side, of which wound he died in a few minutes, this was held not to come within the cases excepted in a policy of insurance on his life of "death by means of invasion, insurrection, riot or civil commotion, or of any military or usurped authority, or by the hands of justice."†

A policy of life insurance contained a proviso, that if the insured should die "in the known violation of any law of these States," said policy should be void. The insured was shot by a party whom he had previously struck; held, that if the blow amounted to an assault, and the shooting was a part of the same continuous transaction, and took place in consequence of said assault, the policy was void. By a majority of the Court, it is not essential that the deceased should have had reason to believe that his criminal act might expose his life to danger.‡

A policy of life insurance contained a condition "that in case the said E. shall die by his own hand, or in consequence of a duel, or the violation of any law, or by the hands of justice, the policy shall be void," the jury found that the said E. (on whose life the policy was taken) killed himself as "the result of a blind and irresistible impulse, over which the will had no control;" held, that the insurers were liable. The condition did not apply to suicide in a fit of insanity (Kent, J. dissenting.)‖

* Harper *v.* Phœnix Insurance Co., 18 Missouri, 109; 19 Missouri, 506.

† Spruill *v.* N. C. Mutual Life Insurance Co., 1 Jones' N. C., 126.

‡ Cluff *v.* Mutual Benefit Life Insurance Company, 13 Allen, 308; American Law Review, vol. 2d, 1867 and '68.

‖ Eastabrook *v.* Union Mutual Life Insurance Company, 54 Maine, 224; American Law Review, vol. 3, p. 128.

Breasted *v.* Farmers' Loan and Trust Company, 4 Hill, 73. The declaration was on a policy of insurance upon the life of Hiram Comfort, the plaintiff's intestate. The policy contained a clause providing that, in case the assured should die upon the seas, or by his own hand, or in consequence of a duel, or by the hands of justice, etc., the policy should be void. The defendant pleaded that Comfort committed suicide by drowning himself in the Hudson River. Replication, that when the assured drowned himself he was of unsound mind and wholly unconscious of the act.

W. C. Noyes for the defendant insisted that the replication furnished no answer to the matter set forth in the plea. He commented on Chitty's Medical Jurisprudence, 354. Rex *v.* Saloway (3 Modern Cases, 100); Smith's Mercantile Law, 256; Ellis on Insurance, 102–3; Blaney on Life Assurance, App., 151; McCull's Com. Dictionary, 710, 711, edition of 1839; Jacob's Law Dictionary, title "Felo de se," same title, Homicide, 111; Burns' Law Dictionary, "Felo de se;" Webster's Dictionary, "Suicide;" Park on Insurance, 578, 585, 586, 6th London edition; 1 Phil. on Insurance, 577, 2d edition; Bell's Principles of Law of Scotland, 203, Section 523, 4th edition; Smith's For. Med., 518. Tyrie *v.* Fletcher, Cowp., 699. Bernon *v.* Woodbridge, Dougl., 789. The Amicable Society *v.* Bolland, 4 Bligh's Reports, N. S., 194 (2 Dow. & Clark, 1 S. C.); (Margins on Insurance, 32).

Mr. Sherwood, for the plaintiff, cited and commented on (1 Hale's P. C., 412), (1 Hawks' P. C., Chap. 9, Secs. 1–6); Wood's Inst., 345; 4 Black. Com., 189.

By the Court, Nelson, Ch. J.: The question arises upon the demurrer, whether Comfort's self-destruction, in a fit of insanity, can be deemed a death by his own hand, within the meaning of the policy. I am of opinion that it cannot. Since the argument of the case, I have examined many precedents of life policies used by the different insurance companies, and am entirely satisfied that the words in the policy in question import a death by suicide; provisos declaring the policy to be void in case the insured commit suicide, or die by his own hand, are used indiscriminately by different insurance com-

panies as expressing the same idea; and so they are evidently understood by the writers upon this branch of the law. The policies of the "Society for Equitable Assurance on Lives," and of the "Crown Life Assurance Company" contain the same form of expression as that employed in the policy in question (Ellis on Insurance, 230, 234); and Ellis refers to the phraseology as importing the usual condition to be found in all the policies, though a majority of them probably use the word *suicide*. That word is used in the policies issued by the following companies, viz.: the Royal Exchange and London Assurance, the Westminster Society, the Equitable Assurance, the Pelican Life Insurance (Marsh on Insurance, 780), and the Sun Life Assurance (2 McCull's Com. Dict., 93, 94, American edition); and it is said by the American editor of the book last cited (p. 95, note), that the policies issued in this country contain the same phraseology. (See also 3 Kent's Com., 369.)

Mr. Selwyn mentions several of the insurance companies above named and others, including those whose policies contain the same words as the one in question, and speaks of the proviso as meaning, in all cases, an act of suicide (2 Selw. N. P. by Wheaton, 788 to 790, American edition of 1823; also Smith's Mercantile Law, 256).

The connection in which the words stand in the policy would seem to indicate that they were intended to express a criminal act of self-destruction; as they are found in conjunction with the provision relating to the termination of the life of the insured in a duel, or by his execution as a criminal. This association may well characterize and aid in determining the somewhat indefinite and equivocal import of the phrase. Speaking legally also (and the policy should be subjected to this test), self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to the act of his own hand than to the deadly instrument that may have been used for the purpose. The drowning of Comfort was no more his act, in the sense of the law, than if he had been impelled by irresistible physical power; nor is there any greater reason for exempting the company from the risk assumed in the policy

than if his death had been occasioned by such means. Construing these words, therefore, according to their true, and, as I apprehend, universally received meaning among insurance offices, there can be no doubt that the termination of Comfort's life was not within the saving clause of the policy. Suicide involves the deliberate termination of one's existence while in the possession and enjoyment of his mental faculties. Self-slaughter by an insane man or a lunatic is not an act of suicide within the meaning of the law (Blackstone's Commentaries, 189; 1 Hale's P. C., 411, 412).

I am of opinion, therefore, that the plaintiff is entitled to judgment on the demurrer, and it was accordingly so ordered. The decision of the Supreme Court was affirmed in the Court of Appeals, 4 Seldon, 299, but not with unanimity; five judges voting for an affirmance and three for a reversal. The opinion of the majority, delivered by Judge Willard, and the dissenting opinion of Judge Gardiner, present the arguments on their respective sides, the latter sustaining the decisions of the English Courts.*

St. Louis Mutual Life Insurance Company *v.* Graves. *N. Y. Daily Transcript*, March 7, 1871.

Judge Robertson delivered the following opinion, in which Judge Peters concurred:

Only a few days after the inter-marriage of Leslie C. Graves and Mary E. Searles, both born and reared in Lexington, Kentucky, he procured for her benefit from the appellant, a life insurance company of St. Louis, Missouri, a policy insuring his life to the amount of five thousand dollars to her use, on several prescribed conditions, among which are the following:

"If the said person whose life is insured shall die by his own hand, by delirium tremens, or the use of opium, or in consequence of a duel, or the laws of any nation, state, or province, that then, in such case, the policy shall be null and void."

* Per contra see the opinion of Bigelow, Chief Justice, in Dean *v.* American Insurance Co., 4 Allen, p. 96; also Hartman *v.* Keystone Insurance Co., 9 Harris, 479.

All these terms alike, being *ejusdem generis*, imply a death as the natural consequence of some voluntary act of the assured which he had the moral power to avoid, and against which, therefore, the underwriters would not insure, and could not consistently with the public policy have insured. The inevitable act of an insane man, who in that respect is morally dead, is not, in the sense of the law or of the recited conditions, his voluntary act. An insane act is no more voluntary than any act constrained by extraneous force would be the voluntary and responsible act of the victim of accident or resistless power over his will. The object of the policy was to insure against involuntary death without the fault of the assured.

Graves was insured as a free moral agent, who as such might voluntarily so act as to increase the contemplated risk. It was prudent and just, therefore, to provide in the policy against any extraordinary perils to life resulting from the voluntary conduct of the assured, who, by necessary implication, undertook to abstain from any act jeopardizing his life beyond the ordinary accidents to which it was liable without his fault. For this precautionary condition there was a reasonable and consistent motive. But there was no such motive for avoiding the policy for inevitable suicide, which, whether accidental or otherwise against the free will of a rational mind, is essentially in the category of natural death from ordinary causes, as indisputably insured against. Mental insanity is disease; and the policy insures against death by disease of any sort which ordinary prudence could not avoid. Death by insanity is death by disease, and is so considered in medical jurisprudence. Why except from the insurance death by insanity? Did not the parties contemplate death by any disease not avoidable by prudent and proper conduct? The underwriters took all such risk and no other; and to prevent fraud or imposture, excepted death by *opium* or by *delirium tremens*, and other causes which the assured could avoid, and ought to avoid, and therefore impliedly undertook to avoid. Death "by his own hand" is in the same class of causes for avoidance, and means the same character of avoidable death. The

mind is the man, and the conditions of avoidance all alike contemplate a rational mind and presiding will. Death by opium, therefore, means not the accidental or involuntary, but the rational and voluntary use of opium; death by *delirium tremens* imports death by voluntary and habitual drunkenness; and death by dueling is a voluntary act, all of which deaths might and ought to have been avoided. So, for the same reason, death "by his own hand" means suicide, not accidental or coerced, but premeditated by a sound mind and perpetrated by a free will; and a voluntary act of the will necessarily implies liberty and self-control; and consequently the act of an insane mind or subjugated will is not voluntary. It is not the act of the man, but of some power above him, and which his will cannot elude or control. The condition as to "death by his own hand" reasonably imports, therefore, that if the insured should commit suicide voluntarily when he had the moral power to forbear, just as he might commit it by the habitual use of opium or intoxicating liquors, the policy should be thereby avoided. The death in each case alike, must be the voluntary act of a sane mind and a responsible will. As policies are peculiar in their style, and not easily intelligible by the common mind, this language should, in cases of doubt, be most favorably construed for the benefit of the assured. This is enough for this case. There is some apparent conflict in the adjudged cases on the construction of just such a condition of avoidance in a life policy as that which we are considering; but there is no very essential diversity in principle; all that is judicial, with perhaps one exception, concurring in the principle that to avoid the policy the death must be "voluntary." And no mind, itself rational, can contemplate any act as voluntary unless it be the offspring of a free volition, unconstrained by inevitable duress, physical or moral.

In the case of Dean *v.* American Insurance Company, 4 Allen's Reports; the Supreme Court of Massachusetts, in an elaborate self-contradictory and unconclusive opinion, seemed inclined to construe the words "if he died by his own hand,"

as intended to mean self-destruction, however or by whomsoever effected. But, to escape the absurdity of including death by accident, the opinion concludes that the avoiding act must be voluntary.

This argument is surely a felo de se, or must concede that all suicide, however effected, is voluntary, and this is a *petitio principii*, and begs the question. This case, therefore, though apparently the strongest against us, is when its metaphysical labyrinth is threaded, corroborative of our conclusion that the avoiding act must be voluntary. This interpretation of the decision can be evaded only by the assumption that it uses the word "voluntary" in some recondite sense, inconsistent with its legal and metaphysical import.

In Hartman *v.* Keystone Insurance Company (9 Harris, 479), the Supreme Court of Pennsylvania say that the words "die by his own hand," standing alone, "mean any sort of suicide." This has no essential bearing on the question we are considering, and *noscitur a sociis*, cannot be disregarded. But several American cases ably, and, as we think, conclusively sustain our construction.

In Breasted *v.* The Farmers' Loan and Trust Company (4 Hill, 74), the Supreme Court of New York, in a powerful opinion by Nelson, now of the United States Supreme Court, adjudged that "suicide" and "died by his own hands," as generally used in policies were synonymous, and that "die by his own hands" means voluntary self-destruction by the free will of a sane man; and said "self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to the act of his own hand than to the deadly instrument that may have been used for the purpose."

"The drowning of Comfort was no more his act in the sense of the law than if he had been impelled by irresistible physical force."

"Self-slaughter by an insane man or a lunatic is not an act of suicide within the meaning of the law" (4 Black. Com., 189; 1 Hale's P. C., 411).

In this case, therefore, the Court decided that the policy

was not avoided, though the assured died by his own hand, but without a self-controlling will to avoid the act. And on an appeal to the Court of Appeals that judgment was affirmed by a more argumentative opinion by Willard (Selden's Reports, 303), in which it was adjudged that "suicide" and "death by his own hand" were synonymous in policies. And the Court said that in each the act must be intentional, and therefore criminal, which could not be the case if the mind was constrained by moral or physical duress; and said also "can it make any difference whether this coercion came from the hand of man or the visitation of Providence?"

And the same principle is recognized and enforced by masterly argument by the Supreme Court of Maine, in the case of Esterbrook *v.* The Union Mutual Life Insurance Company (54 Maine Reports, 225), in which the Court cite and criticise the British case of Borradaile *v.* Hunter (5 Manning & Granger, 639), and that of Clift *v.* Schwabe (3 Manning & Granger, 437).

Now, in the case of Borradaile *v.* Hunter, a majority of the Court, Chief Justice Tyndall and others dissenting, decided the policy was avoided by the self-destruction of the assured, because the jury found that the act was voluntary; thus implying that unless the act was voluntary, the policy had not been avoided. And this, so far, is coincident with our opinion. But that Court seemed to think that knowledge of right and wrong may make an insane act voluntary. This inconsistency of the past generation on the phenomena of insanity is exploded by the advancing science of this more rectified age. Moreover it seems that not only Tyndall, but Maule, Pollock, Creswell, Tenterden and other eminent jurists of England, disapproved the inconsistent doctrine in Borradaile *v.* Hunter and Clift *v.* Schwabe which followed it, and that Lord St. Leonards says in a note to Bunyan on Insurance, 75, "Sed quere the decision." Those cases are, therefore, not full and unquestioned authority even in England, except so far as they support our conclusion that the act cannot avoid the policy unless it be "voluntary," is.

Hence, referring to those British cases as coincident in reason with Breasted *v.* Farmers' Loan and Trust Company, as reported in Hill and Seldon (Phillips on Insurance, Section 895) says, in effect, that any mental derangement sufficient to exonerate a party from a contract would render a person incapable of occasioning the forfeiture of such a policy as this.

We may now conclude that principle, reason, and authority, all concurring, show that an insane act is not voluntary, and that to avoid the policy in this case the act of self-destruction must have been voluntary. Was Graves' death a voluntary act? This is the vital question for solution by the law and the facts.

Every self-destroyer literally dies "by his own hand;" but technical suicide implies a sane and controlling mind. All this the parties to the policy must be presumed to have understood, and consequently to have contemplated, by the words "if he died by his own hand," the death of a sane man by his own voluntary act, and not by accident or the merely mechanical hand of a maniac.

In about four months after the date of the policy the assured was shot in the head, about ten o'clock, on the night of the 17th of April, 1867, and, immediately after the report of the fatal shot, was found lying dead and alone in the dark, in his livery stable, near a pistol which he had only a few moments before unfortunately procured from a friend; and, though the contrary has been assumed, yet the circumstances will allow scarcely a doubt that he died "by his own hand."

To recover on the policy the widow of the assured brought this action, and averred that the fatal shot was the involuntary offspring of a momentary paroxysm of moral insanity, which subjugated his will, and impelled the homicide beyond the power of self-control, or successful resistance. The appellant demurred, and, being overruled, traversed those allegations; and on that substantial issue the jury found for the appellee, and the judge rendered judgment against the appellant, now sought to be reversed. According to matured philosophy and the corroborating authority of elementary writers such as

Prichard and Esquirol and Ray and Taylor, and of many modern adjudications, both British and American, there may be moral as well as intellectual insanity, and essentially contradistinguished from it. When, as often happens from congenital mal-organization or supervenient disturbance of the normal condition of a sound mind in a sound body, the senses present false images which, accredited necessarily by the deluded victim as intuitive certainties, no reasoning or proof can rectify the illusion of a mind in such abnormal condition, and, consequently, as no punitory sanction can prevent the effects of such insane delusion, there is no legal responsibility. This is called intellectual insanity. But, while the senses are apparently sound and true, the affections may be perverted, or the moral sentiments unhinged, in such a degree as to subjugate the will to some morbid appetite or ungovernable passion, and thus precipitate against the will insane but conscious wrong. This is contradistinctively called moral insanity. Such are the forms of monomania entitled kleptomania, pyromania, nymphomania, homicidal mania, etc., now well defined and recognized as irresponsible insanity. Whether and how far these two distinctive forms of insanity run into and sympathize with each other is unknown. But generally the one is apparently untinged by the other, and in moral dethronement by insane passion there may be no delusion, but the will is overwhelmed by delirious passion, which it can neither stifle nor successfully resist. Smith *v.* Commonwealth (1 Duvall) is Kentucky authority supporting this theory. The appellee rests her case on the plea that her husband's suicide was an act of moral insanity; and her counsel assume that all suicide is an insane act, or *prima facie* evidence of insanity in some phase. All this is controverted by the appellant; and here lies the issue discussed and tried.

On the question whether a sane mind can commit voluntary suicide, there has been some conflict of opinion. Some medico-jurists insist that suicide is necessarily an insane act; others that it is only *prima facie* evidence of insanity.

The first hypothesis has been generally discredited, and the latter much doubted, in all time and every form, ever since the

suicides of Themistocles, Demosthenes, Hannibal, and Cato of Utica. Without faith in a future state of retribution, the historic men seemed, each and all, to prefer, on rational calculation, annihilation to hopeless torture or degradation. Even assurance of immortality might not always stay the voluntary hand of the reasoning suicide. Martyrdom for faith or principle or opinion, though not a positive act of suicide, is yet virtually self-immolation on the altar of truth and of posthumous fame. And many such self-sacrifices illustrate the middle ages, and even subsequent periods of the earth's history, without the imputation or suspicion of impelling insanity. Still self-destruction is so rare and awful as in itself and by itself, to imply insanity, in the absence of proof of motive or predisposing causes. Such are our judicial theories on this occult subject.

Without elaboration of the elements of physiology or psychology, or analysis of Ray, or Esquirol, or Prichard, or Taylor, all substantially concurrent or of British and American adjudications, in some respects conflicting, we are content with the conclusion that the foregoing outline sufficiently defines the law of this case.

In giving and refusing instructions on the trial, the Circuit Judge, with one exception, substantially applied the law as thus defined. If paroxysm of moral insanity caused the death of the assured, the suicidal act was involuntary, and at the instant unavoidable, even if he then knew its illegality and all its consequences; for such knowledge, as before suggested, is inconsistent with that form of insanity, and, therefore, the Court did not err in refusing to instruct the jury otherwise, and of which the appellant most complains. But instruction number three, given for appellee, may be so interpreted as to be misleading and erroneous, and was therefore improperly given. This is the exception before suggested. The evidence of insanity is conflicting. The assured was not only blessed with a loved and loving young wife, but with prosperity in business, without any disclosed cause to be tired of life. Evidence of a rumor that on the night preceding his death, he had burned his brother's rival livery stable was

admitted. That accusation, if he knew it, might have operated as a powerful motive to escape by suicide the agony of overwhelming disgrace ; and, therefore, the admission of the testimony might not have been prejudicial to the appellant, and especially as during the evening of the intervening day L. C. Graves took several copious and solitary draughts of intoxicating liquors, as if to drown distress and give him a false and reckless courage for a desperate deed, which calm and sober he could not perpetrate. But as we cannot know the effect of that testimony on the mind of the jury, we adjudge the evidence incompetent unless he had heard the rumor. It also appears that only a few moments before the report of the pistol, he by much importunity procured the weapon from a friend, and was drunk. These facts conduce to the conclusion that the suicide was voluntary and premeditated, and was not the inevitable result of moral insanity.

On the other hand, his apparent felicity in his domestic relations and prospects, the monstrous character of the act itself, and the want of certain proof of any strong motive for it, fortify the *prima facie* presumption of insanity, which is still more strengthened by the testimony of doctors Chipley and Skillman, who both, after hearing the evidence, concurred in the belief that, if Graves shot himself, the act was the offspring of moral mania.

The probabilities are so nearly balanced that the preponderance would not allow this Court to set aside a verdict either way for want of evidence to support it. But the resisted admission of the opinions of many unprofessional witnesses expressed on a long hypothetical question as to whether they thought that, under all the circumstances, Graves if sane would have shot himself, was a substantial error, prejudicial to the appellant.

For that error, the error in instruction number three, and the error in admitting evidence of the monomania, the judgment is reversed, and the cause remanded for a new trial.

Chief Justice Williams delivered the following separate opinion, in which Judge Hardin concurred :

January 7, 1867, Leslie C. Graves, appellee's husband, procured from appellant a policy of insurance on his life, in his wife's name and for her benefit, which contains a *proviso* with six several paragraphs, the fourth being as follows:

"If the said person whose life is hereby insured shall pass beyond the above described limits; or shall be personally engaged in blasting, mining, sub-marine operations, or the production of highly inflammable or explosive substances; or in working or managing a steam-engine in any capacity; or as a mariner engineer, fireman, conductor, or laborer in any capacity upon service on any sea, sound, inlet, river, lake or railroad; or shall enter any military or naval service whatsoever (the militia when not in active service excepted), without the consent of this company in each of the foregoing cases, previously given in writing; or if he shall die by his own hand, by delirium tremens, or the use of opium, or in consequences of a duel, or the violation of the law of any nation, state, or province; * * this policy shall be void."

Without the least sign of previous mental or moral insanity, so far as the evidence in this case exhibits, and after stimulating himself freely with ardent spirits, as though to raise his animal courage to an adequate degree for the act, and after importuning a friend to loan him his pistol, which the friend, though he at first declined, did, on being pressed, and promised a return within a very short time, Leslie C. Graves shot himself on the evening of April 17, 1867, about ten o'clock, and died instantly, and within less than a half-hour after obtaining the pistol. The only possible clue to account for any disposition to take his own life was a current rumor about the city of his residence (Lexington), that through his instrumentality his brother's rival livery-stable had but two nights before been burned; but even this is not proved to have reached his ears.

In this suit on said policy by the wife, the jury have found for her the sum stipulated, five thousand, under the following among other instructions of the Court:

"That before the jury can find for the defendant, they must be satisfied from the evidence given that Leslie C. Graves,

whose life was insured by the defendant, committed suicide, and that when he did the act his intellect was unimpaired, and that he knew it was forbidden both by moral and human law, yet if they believe from the evidence that at the instant of the commission of the act his will was subordinated by any uncontrollable passion or emotion causing him to do the act, it was an act of moral insanity, and they ought, if they so believe, to find for the plaintiff."

And we are now asked to say that this is law. In all the vague, uncertain, intangible, and undefined theories of the most impracticable metaphysician on psychology and moral insanity no Court of last resort in England or America, so far as has been brought to our knowledge, ever before announced such a startling, irresponsible, and dangerous proposition of law. For if this be law, then no longer is there responsibility for homicide, unless it be perpetrated in calm, cool, considerate condition of mind. What is this proposition when compressed in a single sentence? That if his "intellect was unimpaired, and that he knew it was forbidden both by moral and human law, yet if at the instant of the act his will was subordinated by any uncontrollable passion or emotion causing him to do the act, it was moral insanity, and they ought to find for the plaintiff." Concede that it was through either passion or mortification, or fear of disgrace because of this rumor, and instead of killing himself he had killed his brother, or some one else whom he suspected of being connected with the rumor, should this transport of passion or mortification or fear of disgrace have exempted him from criminal responsibility?

If so, then, indeed, the more violent the passion and desperate the deed the more secure from punishment will be the perpetrator of homicide or other crime. Had Graves killed another under the circumstances developed in this case, we should enter our most solemn protest against his exoneration from responsibility. But it is not necessary to put this case on any such grounds, for this is a civil suit, founded on a civil contract.

The doctrine of moral insanity, ever dangerous as it is to

the security of the citizen's life, and pregnant as it is with evils to society, has but little or no application to this case. Too uncertain and intangible for the practical consideration of juries, and unsafe in the hands of even the most learned and astute jurist, it should never be resorted to for exemption from responsibility save on the most irrefragable evidence, developing unquestionable testimony of that morbid or diseased condition of the affections or passions so as to control and overpower or subordinate the will before the act complained of; for if the act is to be evidence of moral insanity for the suicide, so it will be for the homicide, the parricide, and the seducer and the ravisher. But as the general covenants of the policy assured against all deaths by disease, whether of body or mind, what did the parties mean by inserting the proviso that the company was not to be responsible "if he shall die by his own hand?" These are important and pregnant words, full of meaning. In natural and common parlance there would be but little difficulty in this determination, for the whole contract and the objects of the parties as therein evinced. But the refinements of astute and metaphysical minds have refined away this in exploring the mazy, dark, and limitless region of psychology and moral insanity, and herein lies the difficulty.

The party did not intend to insure against self-destruction; yet says the refined metaphysician, this means a voluntary self-destruction is evidence in itself of such moral insanity. So the act of taking his own life disproves the self-destruction. Was there ever a more self-destroying argument or theory? And if this theory be true that the act of suicide evidences insanity, either moral or mental, does this not itself establish the fact that it was against such death that the company refused to insure, and so provided for its exemption from the operation of the general covenants of the policy? If moral insanity, when the mind is left unimpaired, is to be substituted for disease, to what purpose were the words? What kind of self-destruction did they provide against? For the astute metaphysicians who testified in this case gave it as their opinion that in a Christian country no sane man would com-

mit suicide, and so testified nearly every other witness, and there were many who were called to the point; and so, it is presumed, found the jury, for this is the sole act of insanity proved, or attempted to be proved, in the case.

Now this actual practical *reductio ad absurdum* illustrates the uncertain and intangible impalpability of such a theory. Here the insurance company does not insure against self-destruction. This, says the theorist, does not embrace an act of moral or mental insanity, and that the act of self-destruction evidences, in itself, such moral insanity; the inevitable logical result, therefore, is, that as self-destruction testifies to moral insanity, which is not embraced in the proviso, so self-destruction is not embraced in the words "if he die by his own hands." If this be so, what do they mean? For there they stand as part of the covenant, and as a qualification to the previously used general terms of responsibility by the company. This, in effect and to all legal and practical purposes, nullifies and abolishes the proviso and renders it a mere *brutum fulmen*, a senseless, imbecile provision.

If, then, we would escape this illogical absurdity, and attach any sensible meaning to these words, and given them any effective operation, we must find a more practical solution than the theory of moral insanity has or can present to us.

It is remarkable, that all the decisions brought, or which have come to our view, have been made upon strongly developed and distinctly marked cases of prior intellectual insanity, and do not embrace a single case of moral insanity; yet there was a divided court, whether of England or the American States, save alone that of Massachusetts, in the great case of Dean et al. *v.* American Life Insurance Company (4 Allen, 96), wherein the reasoning of Chief Justice Bigelow was so clear, strong, and palpable, and presented such a clear, practical point in such cases, that it unanimously carried that Court of six judges, deservedly distinguished for their learning and ability.

It is no argument to say that the literal meaning of those words would avoid the policy on every self-destruction, however this might be produced, whether by the merest casualty,

or by the raving maniac who knew not right from wrong, nor life from death. Such a meaning has not been contended for by the insurer nor its attorney, nor justified by the opinion of any judge ; but a reasonable and fair construction is sought to be placed on them, as derived from the whole contract and the objects of the parties as therein manifested.

Borradaile *v.* Hunter, decided in 1843, is a leading English case (44 English Common Law Reports, 336), in which the jury found specially "that Mr. Borradaile voluntarily threw himself from the bridge (over the Thames), with the intention of destroying his life ; but at the time committing the act he was not capable of judging between right and wrong." There were many acts of insanity before the suicide proved ; besides, he was a divine, and doubtless well instructed in moral and future responsibility, which greatly strengthened the other evidence of insanity ; yet Mr. Justice Erskine entered the verdict for the defendant ; but afterward, upon rule to set it aside, the case came before the Superior Court, consisting of the Lord Chief Justice Tindall and Justices Maule, Erskine, Coltman, and Creswell, the Lord Chief Justice alone dissenting.

Erskine said : "Looking simply at that branch of the proviso upon which the issue was raised, it seems to me that the only qualification that a liberal interpretation of the words with reference to the nature of the contract requires is, that the act of self-destruction should be the voluntary and wilful act of the man, having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by the act ; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself." The language of the English policy was identical with the one under consideration, and judgment was entered for the defendant.

Three years subsequently another English case came under review of her Courts, to wit: Clift *v.* Schwabe, 54 English Common Law Reports, 437. This, however, was upon a policy providing that it should be void if the person whose life was insured should commit suicide. In this case it was held by five to two judges that the word suicide must be taken in its common acceptation, not being a word of art to which a legal technical meaning attaches, but in ordinary parlance means one who had purposely killed himself.

The Court, upon solemn argument and due consideration again affirmed the principles announced in Borradaile *v.* Hunter, and held the policy void, because the said Schwabe, whose life was insured, committed suicide by taking sulphuric acid with the intent to kill himself, though then of unsound mind. The reasoning in this was similar to the other case, since which time the law has been regarded as so settled in England.

In 1843 the Senate of New York, sitting as a Court of Errors in Breasted *v.* Farmers' Loan and Trust Company (4 Hill, 74), held that "suicide involves the deliberate termination of one's existence while in possession and enjoyment of his mental faculties, self-slaughter by an insane man or lunatic is not an act of suicide within the meaning of law."

But the evidence or character of Comfort's insanity is not given in the short, unphilosophic and weak argumentation of this political body, though written by its Chief Justice. The same case, however, went up to the Appellate Court from the Supreme Court of New York in 1853 (4 Selden, 303), and it appears therein "that the assured threw himself into the Hudson River from the steamboat Erie, while insane, for the purpose of drowning himself, *not being capable at the time, of distinguishing between right and wrong*," as found by the referees.

Here was evidence of insanity, before he perpetrated the deed, to such an extent as to destroy his knowledge and power to discriminate between right and wrong; and what was said in the opinion of the Court much more argumentative than

the other, must be taken in reference to such character of mental insanity. And while a majority of the Court evidently felt the cogency of the reasoning and authority of the English Courts, still it drew a distinction between the facts insisting that in the English cases the suicide had acted *voluntarily* but not so with Comfort; so that they were deciding in a case where no volition had been exercised, nor was there power to distinguish between right and wrong, which makes out a case of bad intellectual lunacy; yet even here was a nearly equally divided Court, or a majority of four against a minority of three on such a case.

The next case is that of Esterbrook *v.* The Union Mutual Life Insurance Company (54 Maine, 226), in which the Supreme Court of Maine, by a divided Court of four to one, upon a policy identical in language to the one in this case, and upon the finding of the jury "that the self-destruction was the result of a blind and irresistible impulse over which the will had no control, and that the self-destruction was not an act of volition,"—held that the policy was not avoided by such an act committed by one laboring under such insanity.

But in the case of Hartman *v.* Keystone Insurance Company (21 Penn., 479), the Supreme Court of Pennsylvania, by Chief Justice Black, held that "the words 'die by his own hand' must be disconnected from those which follows, standing alone they mean any sort of suicide;" one judge dissenting, one absent, and three concurring.

In Dean *v.* American Mutual Life Insurance Company (4 Allen, 96), the Supreme Court of Massachusetts, by unanimity of the six judges, held that a policy containing the words in the proviso that if the assured "shall die by his own hand" it is to be void, means to exclude risks of "the destruction of life by the voluntary and intentional act of the party assured." The Court said: "The moral responsibility for the act does not affect the nature of the hazard. The object is to guard against loss arising from a particular mode of death. The *causa causus*, the motive or influence which guided or controlled the will of the party committing the act, is immaterial

as affecting the risk which the insurers intended to except from the policy. This view is entirely consistent with the nature of the contract. It is the ordinary case of an exception of a risk which would otherwise fall within the general terms of the policy. These comprehend death by disease either of the body or brain, from whatever cause arising. The proviso exempts the insurers from liability when life is destroyed by the act of the party insured although it may be distinctly traced as the result of a diseased mind. It may well be that insurers would be willing to assume the risk of the results flowing from all disease of the body, producing death by the operation of physical causes, and yet deem it expedient to avoid the hazards of mental disorder in its effects on the will of the assured, whether it originated in bodily disease or arose from external circumstances, or was produced by a want of moral and religious culture."

The Court again said, the question is not how far can the literal meaning of the words be extended, but what is a reasonable limitation and qualification of them, having regard to the nature of the contract and the objects intended to be accomplished by it?

Applying this principle to the proviso, it would seem to be reasonable to hold that they were intended to except from the policy all cases of death caused by the voluntary act of the assured, when his deed of self-destruction was the result of intention, by a person knowing the nature and consequences of the act, although it may have been done under an insane delusion, which rendered the party morally and legally irresponsible.

If the suicide was an act of volition, however excited or impelled, it may in a just sense be said that he died by his own hand. If the death was caused by accident, by superior and overwhelming force, in the madness of delirium, or under any combination of circumstances from which it may be fairly inferred that the act of self-destruction was not the result of the will, or intention of the party adapting means to the end, and contemplating the physical nature and effect of the act, then it may be justly held to be a loss not excepted

within the meaning of the proviso. A party cannot be said to die by his own hand, in the sense in which those words are used in the policy, whose self-destruction does not proceed from the exercise of an act of volition, but is the result of blind impulse, of mistake or accident, or of other circumstances over which the will can exercise no control.

This is the tangible, practical view of the subject, and within the comprehension of plain, sensible men, such as generally make contracts, and such as juries are generally composed of, and embraces the true philosophy of the proviso, and the reasons, for its insertion, rendering it intelligible and valuable.

It is remarkable that every one of these cases, both in England and America, arose out of intellectual insanity—a disease often, if not universally, produced by physical derangement evidenced before the act of self-destruction. If judges could differ in such cases—and a great majority hold that even the insanity must be of such a degree as to preclude volition and a comprehension of the physical result of the act before it should be exonerated from the operation of the provision in the policy—could it not be rationally inferred that in a case of mere moral insanity, where the intellect was left unimpaired, with a full comprehension of the act and physical result thereof, and studiously adapting the means to the end, the judges would have been unanimous that the mere impulse of passion at the instant of the act, however strong and overwhelming and controlling over the mind, could not rescue it from the operation of the proviso ?

It never has been anticipated by any law-writer known to us that the mere transports of passion at the time the fatal deed is done, when the mind remains unimpaired and in the exercise of its intellectual faculties, however violent and overwhelming, shall exonerate from even criminal responsibility, much less to avoid civil contracts. The close proximity of the words "shall die by his own hand" to words signifying criminal intent, no more indicates that such intent enters into their meaning than does their close proximity to other words importing no such intent, but an innocent one, show that they should be construed to mean irresponsible, innocent action;

and as these words stand in close connection with both classes of words, how shall Courts determine that they are to be construed by the one rather than the other? Evidently these words, as held by Chief Justice Black, in the Pennsylvania case, and by other Courts, must be construed by themselves, and in their common, natural signification held to mean what the parties understand, as derived from the whole contract, its nature, and objects.

The opinions of witnesses, not founded on science, but as a mere theory of morals or ethics, whether given by professional or unprofessional men, are wholly inadmissible as evidence. Hence, the opinion of even physicians that no sane man in a Christian country would commit suicide, not being founded on the science or phenomena of the mind, but rather a theory of morals, religion, and future responsibility, is not evidence.

Nor should the Court have permitted the so recent rumor about the city to be proved over the defendant's objections, unless it had been carried home to the knowledge of deceased.

The sanity of the suicide, like that of the homicide, is legally presumed, and the evidence of insanity must be sufficiently potent to overcome both this legal presumption and the evidence of sanity, and establish, to the satisfaction of the jury, insanity (Graham *v.* Commonwealth, 16 B. Mon., 587; Kriel *v.* Commonwealth, 5 Bush., 362). The mere prohibited act can rarely, if ever, do this.

It would be well on another trial to submit special facts and have a special finding of the jury, so that the Court may pronounce the judgment of law upon such finding.

Wherefore, concurring in the reversal, but not in the law as expounded by Judges Robertson and Peters, we have herein given our opinion.

Catharine S. Gibson, respondent, *v.* The American Mutual Life Insurance Company, appellant (Transcript Appeals, Vol. V., p. 261). This was an action on a policy of insurance on the life of Marcus W. Gibson, issued March 8, 1858, for seven years, payable to Catharine S. Gibson, his wife. The

defences set up in the answer, and insisted upon on the trial were :

First. That the proof furnished " omitted to state truly the cause of the death of said Marcus."

Second. That "the said Marcus W. Gibson committed suicide by designedly shooting and wounding himself, with the design and for the purpose of producing death, of which shooting and wounding said Marcus died."

The proofs furnished, and which were produced by the defendant on the trial and offered in evidence, were the certificate of the officiating clergyman at the funeral of Gibson, and the statement of John G. Meachem, the attending physician of Gibson during his last sickness, made in answer to printed interrogations furnished by the defendant, and the affidavit of the plaintiff. The condition required, among other things, the proof should contain the names of the physician or physicians, and other friends in attendance, and the place and date of burial, the affidavit of the medical attendance, etc.

Gibson died on the 24th day of March, 1860. The defendant proved, by Gibson's declarations, that "he was crossing a log with his gun in his hand ; that his foot slipped, and he fell off, and the gun went off and shot him through the bowels." After receiving the wound which caused his death, Gibson was brought to his own home, and lived about twenty-four hours.

The defendant put the following question to one of the witnesses : "Have you had an opportunity of knowing his religious sentiments ?" and proposed to show that Gibson was an infidel. This evidence was excluded by the judge, and the defendant excepted to his decision.

To another witness the defendant put the question : "Did you know his religious sentiments ? " and offered to show that Gibson was an atheist. This evidence was excluded, and the defendant excepted to the decision.

The jury rendered a verdict for the plaintiff, and upon an appeal to the General Term the judgment was affirmed.

In the decision of the Court of Appeals, Ch. J. Hunt says: "In his elaborate argument the defendant's counsel insists, as his first ground of appeal, that the preliminary proofs were deficient in that they did not contain the affidavit or certificate of Dr. Bartlett, as one of his attending physicians. Although he had been a practising physician, Dr. Bartlett was not such at the time of the death of Gibson, and had not been for some years previous. He was one of the sympathizing friends, who, on occasions of accident or death, are present to give aid and comfort. Mrs. Gibson, immediately on the arrival of her husband, dispatched a messenger for Dr. Meachem, the family physician. In the meantime, the wounded man being in great pain, some one suggested that Dr. Bartlett had better make an examination of his wounds. Mrs. Gibson assenting, he did so, and also gave him morphine to relieve his pain. Upon the arrival of Dr. Meachem, he took charge of the case.

"It does not appear that Dr. Bartlett acted in any other than a friendly capacity, or that he had at any time desired or expected compensation for his services. I do not know that he could claim compensation in money for his kind offices, any more than could the other neighbors present and assisting. The defendant did not make any request that this question should be submitted to the jury; but claimed, as a matter of law, that Dr. Bartlett was an attending physician. This claim cannot be sustained.

"The question in contention at the Circuit was, whether the death of the deceased was accidental, or whether it was a case of intentional self-destruction. To aid in elucidating this inquiry, the defendant insists that he had a right to show that the deceased was an infidel and an atheist, and thence to draw an argument in support of the theory of intentional suicide. The defendant insists upon the competency of this evidence, upon the further ground that every man is presumed to be a Christian; that the Christian religion prohibits self-slaughter; that this presumption may operate on the minds of the jury,

and should be allowed to be overthrown by the testimony offered. It is not necessary to say how far, or how precisely the presumption of personal Christianity exists. That we live in a Christian country is certainly acknowledged by the laws of the land, which prohibit blasphemy and profanity, and enjoin the observance of Sunday. That we believe in a governing Providence, by whom crime will be punished and virtue rewarded, is assumed in every oath that is administered. To say, however, that every man is presumed to be a personal Christian, upon whose mind and upon whose actions the precepts of the Gospel exercise an influence, is so much against our common experience, that it cannot be admitted as a legal principle. It may be argued, however, that a man may hold this belief, although his actions be not at all times influenced by it. This is probably true; and here arises the difficulty in the admission of the evidence offered. It is speculative, uncertain, remote, and based upon no well-defined legal principles. Consider the great variety of creeds held by those calling themselves Christians. We find not only the Roman Catholic, the Episcopalian, the Presbyterian, the Methodist, and Baptist, but a large class who believe in the punishment of sin in this world, and the ultimate salvation of the whole human race. These are all Christians in every acceptation of that term. They all acknowledge the inspiration of the Holy Scriptures, and the obligation of its commands. In what way, and how far, do these systems of belief operate upon the conduct of man?

"Is it certain that he who believes in the eternal punishment of the impenitent in a future world is a better observer of the laws of his country, and more free from actual crime, than he who denies that doctrine? Or is it certain that he who believes in the final salvation of all men would refrain from an offence which he would have committed had he believed there was no future state? No man can answer with certainty.

"Does the fact that a man believes in the Christian religion furnish legal evidence that in a particular case he has not violated the laws of God, or of his country? Experience

teaches us that not only believers in the Christian religion, but those who for years have had the highest evidence that they might expect the ultimate reward of the good Christian, are guilty of grave offences, moral and legal. The law takes man as he is, with his passions, his appetites, his moral training and his religion. With all these elements his life is a struggle and a contradiction. What his actions will be, can be determined by no form of belief, and by no fixed principle of law. Each man's case will be different from that of his neighbor, and from day to day will be different from his own. The "Infidel" is one who does not recognize the inspiration or obligation of the Holy Scriptures, or the generally recognized features of the Christian religion. The "Atheist" is one who does not believe in the existence of a God. The result of this absence of belief upon his actions is speculative entirely. Does his soul shrink back at the idea of annihilation? We know not. He may not admit the existence of a soul, and the eternal rest of the grave may form his idea of Paradise. On the one side would stand the idea of annihilation, and on the other that of an offended God. Who can say, as a matter of fact, which would produce the strongest effect upon the human mind? Is there any feeling or principle stronger than that instinctive dread of death which all men feel, and which neither the faith of the Christian nor the reasoning of the Atheist can overcome? It does not depend upon life or faith. It is instinctive and common to all men. It would, in my judgment, be incompetent to impeach one's conduct, and to adjudge one's motives and principles upon the proposed idea.

"To adjudge that a man's belief in Christianity will prevent, or tend to prevent the commission of suicide, or that Atheism will produce, or tend to produce, a contrary effect, is to adopt a principle more subtle and speculative, more uncertain and more remote, than the law can recognize. If a sound argument, it would be applicable, to some extent, in every case where character was in evidence. Would it be a just ground of impeachment of the good character of a party to an action, that he is an Infidel or an Atheist?

"If Gibson had been the plaintiff, in an action of slander, could his opponent have reduced his damages by showing his belief in these respects? If he had been indicted for murder, and the question of character had been introduced into the issue, could the prosecution have attacked him by showing his scepticism? or could he have sustained his character by proof that he held a religious belief? Such a suggestion finds no countenance in the authorities. Conduct and life, distinguished from belief, give the standard of character. In law it would be a totally immaterial circumstance. It affords no certain practical test of conduct. The offer, in the present case, is based upon the same idea; and the argument in its defence, although plausible and attractive, cannot be sustained.

"Judgment should be affirmed, with costs; all concurring, it was affirmed."

The following case has been selected as representing the important features in relation to intemperance and other bad habits which are calculated to injure the health of the insured, and the principle seems to be well established, that it is the business of the insurers to question the party about to be insured fully in reference to all his habits of eating and drinking; and also in regard to any other habit which is calculated to impair or injure his constitution; but beyond that he is not bound to disclose any fact not called for by a general or specific question.

Rawls *v.* The American Life Insurance Company, 36 Barbour's Supreme Court Reports, page 357 (affirmed in 27 N. Y., 282). Motion for a new trial upon a case and exceptions. The action was upon a policy of insurance, issued by the defendant, dated July 28th, 1853, for $5,000, on the life of John L. Fish, of Rochester, N. Y., payable to the plaintiff. The complaint averred the execution and delivery of the policy, and set forth the policy and the conditions annexed thereto. It also averred the payment of the annual premiums on the policy up to July 1, 1857, the interest of the plaintiff in the life of Fish, the death of Fish at Rochester, on the 24th day

of February, 1857; that from the time the policy was made, to his death, Fish fully performed and complied with all the conditions of the policy to be performed and complied with by him, and did not do any act or thing prohibited by the terms of the policy; and that the policy was in full force at the time of his decease; that due notice and proof of the death of Fish, and of the circumstances attending the same, were furnished to the defendant, March 6, 1857, in the manner provided in the conditions annexed to the policy; and that although more than ninety days had elapsed since the notice and proofs were furnished, the defendant had not paid the $5,000.

The answer of the defendant contained five articles or parts. The first ignored and so traversed the plaintiff's interest in the life of Fish; the second alleged that Fish did not perform and comply with all the conditions of the policy to be performed and complied with by him, and did many acts and things prohibited by the terms of the policy. Also, that the plaintiff had not made proof, in the manner provided in the conditions annexed to the policy, of the death of Fish, and that such pretended proofs omitted to state truly the cause of his death.

The third averred, that among the written statements and representations made to the defendant by the plaintiff, respecting the life, health, etc., of Fish, presented to the defendant before issuing the policy, and in consideration of which the policy was issued, there was a written statement and representation by Fish, in which he stated and represented that his health was at that time good; that he had not been afflicted since childhood with liver complaint or general debility. There was also a statement by one Shipman, in which Shipman stated that he believed Fish to be then in good health; that he considered Fish healthy and free from any circumstance tending to shorten life; that he believed Fish did not indulge in any habits or practices which had impaired or would impair his health or constitution; that he believed that the occupation, employment, and manner of life of Fish did, in his opinion, agree with his constitution; and

that Fish's prospects of attaining old age were as good as those of any man. That the plaintiff and Fish, at the same time, referred to one Marsh respecting the general health and manner of life of Fish, and procured and delivered, or caused to be procured and delivered to the defendant, a paper signed by Marsh, and which was one of the written statements on which the policy was issued, in which Marsh declared that Fish did not, to his knowledge, indulge in any habits or practices which had impaired or would impair his constitution and general health; that he had not any reason to believe that Fish had an impaired or feeble constitution; that he considered Fish healthy and free from any circumstances tending to shorten life; that his opinion was, considering the general longevity of Fish's family, his occupation, habits, constitution, general and present health, that the chance of Fish's living to old age was as good as that of ordinary persons. That the plaintiff and Fish procured from one Holmes, and forwarded to the defendant, a statement of Holmes, that Fish did not, in his opinion, indulge in any practices or habits which had impaired or would impair his constitution and general health; that he believed the questions contained in the application were fully and properly answered, and that no material fact was omitted; and that Fish was likely to live to old age. That the policy was issued on the express warranty of the party assured that all the said statements were, and each of them was, true; and that if any misrepresentations or concealments were contained in the statements or representations the policy should be void, and all the premiums should be forfeited to the company. And that each and every statement in the said written statements and representations of Fish, Shipman, Marsh and Holmes, in this article of the answer referred to, was false; that Fish and the plaintiff, before and at the time of issuing the policy, had notice thereof; and that, by reason of the premises, the policy was void.

The fourth article of the answer averred, that before, and at the time of issuing the policy, Fish was and had long been a man of licentious, intemperate and disorderly habits and

practices, and frequently or habitually indulged in habits and practices which had impaired or would impair his health and constitution, and shorten his life ; and in the frequent or constant habit of neglecting or violating the laws or rules of good conduct or regimen, on which health and long life greatly depend. All which the plaintiff, Fish, Shipman and Marsh, well knew, or had good reason to believe, at the time their representations were made, and at and before the issuing of the policy ; and though the defendant was ignorant thereof, they did not, nor did any of them, give notice thereof to the defendant, but concealed the same ; and the policy was, therefore, void.

The fifth article averred, that Fish " died in consequence of intemperate drinking," and that, by reason thereof, the said insurance ceased and terminated, and no right of action accrued thereon to the plaintiff.

On the trial the defendant, on the call of the plaintiff, produced, and the plaintiff put in evidence, the proofs of loss furnished by him to the defendant, and proved that such proofs were delivered to the defendant in March, 1857. The plaintiff also proved that on the 28th day of May, 1850, Fish and one Holmes, as partners, were indebted to the firm of Reed & Rawls, of which the plaintiff was a member, in the sum of $9,675.73, and that no part of the debt had been paid. The plaintiff then rested, and the defendant moved for a nonsuit, which was denied, and the defendant excepted. The defendant then offered and read in evidence the statements of Fish, Shipman and Marsh, and adduced testimony for the purpose of showing that, prior to the application for the policy in suit, July, 1853, Fish was of intemperate habits. The plaintiff adduced testimony tending to show that Fish was not of intemperate habits when the policy in suit was applied for.

The Court then charged the jury ; to portions of which charge the counsel for the defendant excepted. The following question was submitted to the jury for their answer. Question : " Was John L. Fish, on the 16th day of July, 1853, to the knowledge of Mr. Marsh, in the habit of intemperate

drinking, to such an extent as had impaired or would, in the opinion of Mr. Marsh, impair his constitution or general health?" The jury found a verdict for the plaintiff for $6,081.57, and answered the question submitted to them, as follows: "The jury think the statement made by Mr. Marsh, on the 16th day of July, 1853, was truthfully made, according to the best of his knowledge."

By the Court, Johnson, J.: The contract of insurance, if honestly and fairly obtained, was a valid contract in its inception. The plaintiff had an interest in the continuance of the life of the party insured, being his creditor. The fact that the debt was due to him, as a member of a partnership, and from another partnership of which Fish was a member, can make no difference. Fish, as a member of his firm, was individually liable for the whole debt, and the plaintiff, as a partner in his firm, was interested in the whole debt. It seems to me there is no difficulty whatever in this. The contract of insurance does not relate to the payment of the debt, but to the continuance of the life insured; and all that is necessary to make the contract a valid one is, that the party procuring it should have some interest in the continuance of such life (Ruse *v.* Mutual Benefit Insurance Co., 23 N. Y. Reports, 516).

I do not see upon what principle the previous declarations of Fish, in respect to his habits, could have been admitted as evidence upon the trial. It was not his contract, and he had no authority to bind the plaintiff by any statement he might make in regard to himself, whether true or false; it would have been mere hearsay, and was properly rejected. His declarations, as between these parties, were incompetent to prove either the fact of his previous intemperate habits, or the fact of the suppression of the information. The question to the witness Moore, as to whether he would regard a person who was in the habitual use of intoxicating drinks to excess an insurable subject, was, I think, properly overruled. The witness, however eminent as a physician, might have very little knowledge as to what kind of persons insurance companies might properly venture to insure. Even if he had been

in the business and practice of insuring lives, the evidence would have been incompetent, as it would have been, in effect, but an opinion as to what insurers of lives ought to do in certain cases. Jefferson Insurance Company *v.* Cotheal, 7 Wend., 72, 78 and 79; Campbell *v.* Rickards, 5 Barn. and Adolphus, 840; 27 Eng. C. L. Reports, 207.

The evidence in answer to the question put to the witness Holmes, as to whether in his opinion Fish did, at the time, indulge in any practices or habits which had impaired, or which would impair his constitution and general health; and also, that in answer to the question put to the witness Shipman, as to whether he believed his answers to questions in the papers correct at the time, can only be sustained on the ground that the defendant, in its answer, had directly alleged that these persons in answering the questions in the papers upon which the policy was issued, had in these respects made statements contrary to their opinions and to what they believed to be true. As the defendant had in its answer made that issue, I think it was competent for the plaintiff to meet it by his evidence. The questions put to the witness Shipman, and also to the witness Dean, as to what their opinions would have been in respect to Fish's health and the character of the risk, if they had known his habits and practices to be as alleged by the defendant, were of the same character as the question to the witness Dr. Moore, and were properly overruled for the same reason. I think the statements of Dean and Holmes were properly received in evidence as part of the papers on which the policy was issued.

The judge charged, that inasmuch as Marsh was referred to as an acquaintance and friend of Fish, the plaintiff would be responsible for the good faith, and for the truth and honesty of such statements, and if they were untrue in point of fact, it would avoid the policy, whether such untruth originated in fraud, or mere negligence or want of recollection. This, it seems to me, was going quite far enough; I think the judge was right also, in charging the jury that if Fish answered truly all the questions put to him, without evasion or concealment, it was sufficient, and that it was not necessary

for him to make any statement in respect to any particular habit, not called for by any general or specific question put to him; and that the omission, under such circumstances, to make any statement in respect to such habit, would not be such a concealment as to avoid the policy. As to the condition of his health he did answer fully, and, as the jury have found, truly, all the questions propounded. But in respect to his habits of eating or drinking, no questions were put to him, and he had the right to suppose that no information was desired by them upon that subject, and the omission to give it in such case is no concealment; no Court would, I think, require a party to make a statement as to his habits and practices, some of which might possibly operate prejudicially upon his health, where nothing of the kind is called for by the questions propounded. The presumption is, that the insurers questioned the party upon all subjects which they deemed material, and all which were within the contemplation of the parties at the time, and beyond that clearly a party is not bound to disclose. There was, therefore, no error, either in the rulings on the trial or in the charge, and a new trial must be denied

The above leading cases clearly establish the following points:

First. The English decisions strictly construe the words "die by his own hands or the hands of justice," or the words "commit suicide," as extending to all voluntary acts, whether the party committing such acts were sane or insane.

Second. The American cases, with few exceptions, construe the same words as meaning only criminal acts of self-destruction, and do not extend to acts not under the control of the will.

Third. That it is the business of the insurers to obtain, by general or specific questions, a full statement of the habits and constitution of the insured, and when these have been answered in good faith by the insured, the policy will be held good.

THE INFLUENCE OF METHOMANIA

UPON

BUSINESS AND CRIMINAL RESPONSIBILITY.

BY STEPHEN ROGERS, M.D., OF NEW YORK.*

FROM the earliest human records down to our own day, effects of alcohol upon the body and upon the mind of man have constituted an important item in his history. Physiologists, pathologists, physicians, lawyers, judges, and divines have each and all taken prominent parts in the discussion and in the management of this great subject. It is a most intimidating circumstance to any change of the views hitherto entertained by the courts of the enlightened nations, that this society may chance to advocate, that they have with solid uniformity, been careful about admitting alcoholic mental affections as causes for legal interference with the liberty of the individual, or with his responsibility for crime. No hope need be entertained of effecting a reconsideration of these time-honored rulings, unless it can be shown in a most convincing manner that there exists such a disease, both of body and of intellect, as may be termed alcoholic.

We will, therefore, first review this branch of the subject.

While it is undisputed, that any substance which has the power of producing disease of the stomach, liver, and other organs connected with the digestive system, will indirectly

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affect more or less gravely the brain, it is sufficient for the purposes of our discussion that the known effect of alcohol upon the brain and nerve substance directly, be examined. We will, to that end, start with the proposition that the affinity of water for alcohol is greater than it is for any of the tissues of the body. While this is a proposition directly demonstrable upon dead tissues only, in which the removal of their watery constituents by saturation in alcohol, may be shown to be nearly fifty per cent., physiological effects present all rational proofs that even the tissues endowed with vitality are liable to the operations of the same chemical law. In the dead tissue, a more or less rapid shrinking of its substance takes place when immersed in alcohol, the results of the escape of its contained water, and the substitution of alcohol. That this process also takes place where living membranes filled with capillary vessels are covered with alcohol, is satisfactorily shown by dropping this fluid upon the web of the frog's foot or the bat's wing. Under these circumstances, the movement of the blood in the vessels soon stops, the corpuscles congregate and contract, the caliber of the vessels diminishes, till at last all movement and perhaps vitality ceases in the part, and it remains a shrunken, leathery, insensible structure, very liable to slough and disappear. This effect is more or less marked, according as the fluid is more or less purely alcoholic.

That a similar result may take place—does indeed take place—when more or less concentrated alcohol is introduced into the cavities of the living body, may be reasonably inferred from the well-known fact that thirst follows the use of alcoholic drink, at the same time that increased urinary discharge occurs; the alcohol displacing a more or less considerable amount of water from the tissues of the body, throwing it into the circulating blood, whence it passes off by the kidneys; facts which were unknown to the good mother, who felt sure her sons did not drink at night for they were always very thirsty in the morning.

It, therefore, appears satisfactorily shown, that both in the dead and living tissues of the animal body, the affinity between alcohol and water is actively manifest. This fact in

animal chemistry finds its application to the subject we are investigating in the next proposition we shall make, viz.: the greater amount of water any animal tissue may contain, the more marked will be the action of alcohol upon it. Now, of all the structures of the human body, the brain is that which contains the largest percentage of water, and, therefore, under similar circumstances, it will be the organ most markedly affected by alcohol.

More than thirty years ago, Dr. Percy, of England, performed a series of experiments, with the object of determining the presence of alcohol in the substance of the brain and its ventricles, in animals poisoned by alcohol; in the course of which he found that alcohol, after a little time, was found in greater per cent. in the brain-substance than in the blood of the animal, and that it was found in the brain-substance in marked quantity, when scarcely a trace of it appeared in the blood.

In remarking upon this interesting fact, Dr. Carpenter, in his essay on the uses and abuses of alcohol, says:

"This fact is one of fundamental importance, as showing us how directly and immediately the whole nutrition and vital activity of the nervous system must be affected by the presence of alcohol in the blood, the alcohol being thus specially drawn out of the circulating current by the nervous matter, and incorporated with its substance in such a manner as even to change —when in sufficient amount—its physical as well as its chemical properties."

From the remarks heretofore made, and the natural presumption that alcohol, taken into the circulation from the stomach, must be more or less largely diluted before reaching the brain by its admixture with the blood, marked permanent chemico-vital effects upon the tissues of that organ need not be looked for, under the ordinary circumstances of a fit of intoxication. But should these be often repeated, it is not difficult to comprehend how a permanent alteration of nerve-structure may be the result. Dr. Carpenter adds the following obviously very reasonable remarks upon the effect of even small amounts of alcohol in the blood, upon the brain-structure, with which it has so great an affinity.

"It is important to observe that this affinity is such as will occasion the continual presence of alcohol in the blood, even in very minute proportion, to modify the nutrition of the nervous substance more than that of any other tissue; for the alcohol will seek out—as it were—the nervous matter, and will fasten itself upon it."

Though it is in all probability true that alcohol, in the concentrated form, does act upon living tissues in a destructive manner when they are exposed to it with no protection, yet in the degree of dilution it is usually imbibed by humanity, its effects are, except remotely, transitory. Its demonstratable effect upon the capillary circulation however, enable us to form some idea, approximating the truth, perhaps, of the commotion set up during a fit of intoxication, between the alcohol in the blood circulating through the vessels of the brain, and the watery portion of the brain-substance surrounding those vessels, which watery portion constitutes about eighty per cent. of the mass of the brain.

Most persons have witnessed the intellectual and nervous phenomena this commotion gives rise to, varying from the slightest exhilaration or torpor, to the wildest frenzy or deepest coma, from the most moderate effect upon thought and powers of motion, to the total abolition of both. To be intoxicated, would, therefore, appear to theoretically involve the wonderfully intricate structure of the brain in no trifling risk of more or less permanent injury. Practically, however, it is among the wonders of the restorative powers of the economy, that such risks are not manifested till many repetitions of the act. Sooner or later the results begin to appear. Permanent derangements of the intellectual faculties, or of the motive power, or both, become apparent.

Dr. Carpenter remarks, very justly, that "There are, in fact, scarcely any diseases of the brain, which are not so much more frequent among the habitually intemperate, than among the habitually sober, as to justify us in regarding the excessive use of alcoholic liquors as among the most efficacious of the conditions of their production."

To be thoroughly impressed with a proper idea of the dis-

turbing disorganizing tendency of these alcoholic shocks upon the intimate delicate brain-structures, I know of no better means than a careful study of them with the aid of the microscope. As we have already stated, the diseased conditions resulting from these shocks manifest themselves in both the motor and mental departments of the brain-system. Though our inquiries carry us into the mental manifestations of those diseased conditions, the intimate relations of the two classes make it essential that we know and recognize the motor indication of alcoholic disease also. Twenty years ago, Dr. Carpenter, after concluding a graphic description of delirium tremens, wrote :

"That a slighter form of this disorder, marked by tremors of the hand and feet, deficiency of nervous power, and occasional illusions, will sometimes appear as a consequence of habitual tippling, even without intoxication having been once produced. And a still slighter manifestation of the want of control over muscular apparatus—such as the trembling of the hands in the execution of a voluntary movement—is familiar to every one, as extremely frequent among the habitually intemperate. We thus see that the disease is at least as much dependant upon the disordered state of nutrition, consequent upon the habitual presence of alcohol in the blood, as it is upon the violence of the excitement, which is the more immediate effect of the stimulus."

Although he does not so distinctly express it, Dr. Carpenter alludes to the nutrition of the brain exclusively in his remarks. These symptoms of functional motor disturbance, the result of chronic alcoholic poisoning, Dr. Marcet states, in his work on Chronic Alcoholic Intoxication, "may last for weeks, months, or years, even after the habit of excessive drinking has been given up;" the truth of which remarks the experience of most observers confirms. "The sharp features, or, if he be fat, the injected cheeks and nose, and their violet appearance, the trembling of the limbs, often of the whole body, or a want of steadiness and co-ordination in the movements, not very unlike incipient chorea, are all symptoms which we should not fail to observe." This tremulousness is

more or less marked, especially by day, and when the person is sitting; sometimes it is confined to a part of the body, as of the tongue, or one extremity; some only tremble when they rise in the morning, giving them difficulty in dressing. In other cases, where trembling is not present, an awkwardness of gait, or of other voluntary movement is observable, giving even young persons the carriage and behavior of old age. Their hands cannot be relied upon to perform the mandates of the will, and a constant effort is requisite to avoid stumbling.

"It is remarkable," says Dr. Marcet, "how long this condition may last," as evidence of functional and no doubt organic brain-disease, "and how rapidly it disappears under proper treatment." Dr. Marcet relates a case in which this clumsiness of the lower extremities was so great that the person could hardly walk, even with the assistance of a stick. A feeling of weakness and heaviness from the hips downwards, I have many times seen complained of in these cases; and they are generally made worse for several days by a fit of intoxication. Symptoms of threatening paralysis often present themselves under the circumstances. With these facts before us relating to the effects of alcohol upon the motor system of nerves, facts which, unfortunately, we too often see proven in the persons of those we meet daily, we will now extend our inquiries to its effects upon the intellectual and moral portions of this wonderful apparatus. Dr. Carpenter remarks, with a great deal of reason, that alcohol seems to single out the encephalic or brain portion of the nervous system, almost to the exclusion of the spinal or motor system; just as strychnine singles out the spinal or motor system, almost to the exclusion of the brain. Whatever ravages, therefore, may be committed upon the motor system by the continued excessive ingestion of alcohol, we have undoubted reason to expect that the intellectual system will be a still greater sufferer.

Practically, we find it to be a fact, that of all the cases of insanity admitted to the asylums in various parts of the world, a per cent. varying from fifteen to fifty and sixty is put down to the effect of the intemperate use of alcohol on the individual or ancestors. Dr. Carpenter thought that twenty-

five per cent. would be quite small enough an estimate for the asylums of Great Britain. There is no reason for supposing our own country's number would be found to be less, if we may judge from the fact that in a single asylum, the cases of *mania-a-potu*, in 1867, amounted to about eleven per cent. It is stated in the petition to the legislature of the State of New York, for the establishment of the Inebriate Asylum in 1857, "that fifty-five per cent. of all of our insanity, and sixty-eight per cent. of all our idiocy, springs directly or indirectly from inebriety alone." The action of alcohol, then, as a mere physical agent in the production of disease of the brain substance, is abundantly shown, and that means disease of mind also, for, as a distinguished author truly remarks, it is ridiculous to suppose that insanity is a disease of the mind and not of the body.

Mens sana in corpore sano is undoubtedly a very good and true general proposition, but it finds its special application in relation to the brain.

Now, diseases of the brain, when produced by alcohol as well as by other causes, have their various degrees of severity. It is sufficient for the purposes of our inquiry that we have shown the ability of alcohol to produce extreme brain disease, so we will now review the various grades of brain unsoundness it is recognized as producing, and thereby show the phases of mental unsoundness it gives rise to. Passing over the inebriating influences, and the various phenomena primarily produced by alcohol, transitory effects which leave no appreciable results after more or less time, we will mention insomnolence, a well known result of cerebral derangement, from a great variety of causes, and a very constant symptom in the positively insane. These periods of insomnia follow fits of intoxication for a long time in some cases, before they give place to declared delirium. They are not infrequently attended with hallucinations of a generally disagreeable character, the objects often appearing double or greatly magnified, or performing some movements which the person interprets as of evil omen. A gentleman of my acquaintance, while under the effect of an over-indulgence in alcoholic drinks, supposed

he saw two doves start up from the road, along which he was driving, and, after fluttering along for a moment over his horses, soar away to a considerable distance, and suddenly plunge into a new-made excavation in the earth. So real did it appear to him that he became at first quite out of patience with a friend who was riding with him, because he did not see the doves also. He, however, became convinced that he had seen nothing but a ghost, foretelling some calamity which he suspects but does not express. I have, unfortunately, only partially succeeded in convincing him that it was alcoholic, and I have in consequence had but bad success in improving his habits. This person has never had delirium. Dr. Marcet relates the case of a cabman suffering from alcoholic disease, who frequently pulled up his horse in the street suddenly to avoid running against an obstacle he distinctly saw, but which he found, upon examination, not tangible. On another occasion this same patient saw things multiplied as many as ten times, so that he could not tell which of the ten to drive clear of, and he was in consequence obliged to give up driving for the time. Similar hallucinations of the hearing, of the taste, and of the smell are known to occur, the patients believing that they are drinking or smelling brandy instead of water, or that they hear voices and sounds that do not exist. These mostly occur during the long sleepless nights, but occasionally during the intervening days. They often immediately precede delirium, but may, as already stated, be the only manifestations of unsoundness of brain for a long period. This affection of the brain is as a rule promptly recovered from, if the cause is not repeated. Unfortunately however, this measure is too frequently disregarded, on account of the existence of a disease already more or less considerably advanced, viz., morbid desire for intoxication, which is in fact only an expression meaning a positive disease of brain-structure, as much as any of the hallucinations above referred to.

What are the reasons for the belief that this desire is an expression of brain-disease? The first reason we may mention, is found in the fact that it is known to be occasionally produced by accidents which seriously disorder the dynamical

properties, and probably the relations of the intimate constituents of the brain-structure; such as severe blows and injuries of the head, resulting in concussion, fracture of the skull, and laceration of the brain-substance, especially concussion: by severe loss of blood, as that often attending child-birth; by the reflex disturbances of the brain and passions during pregnancy, and by the constitutional disturbances which are not unfrequently witnessed in women at the critical period of life, and at the menstrual periods. Dr. Carpenter quotes Dr. Hutcheson, an author of a lunatic-asylum report, as having witnessed its occurrence during convalescence from severe fevers; as produced by excessive venereal indulgence; as having witnessed it in some forms of dyspepsia; and in men whose brains were over-worked, without, in any of those cases, having been able to detect any other cause for it.

Dr. John E. Cuyler, the experienced and very intelligent Superintendent of the McLean Asylum, in his annual report, for the year 1866, speaks of these unfortunate cases in the following language:

"It sometimes happens that after a fever, or other severe illness, or after a fall, or blow upon the head, or after a severe domestic affliction or bereavement, or a sudden loss of property, a person always temperate is seized with, and yields to, an impetuous desire to drink ardent spirits. This is lamented by the individual as much as by his friends, but by successive indulgences which he cannot refrain from, and from which he is not prevented by others, he reaches the sad mental and moral condition of the inebriate. * * * * Such," he adds, "deserve, but do not have sympathy, inasmuch as mental disorder preceded and causes the excess."

Now, as these are all causes recognized as productive of more or less permanent and grave lesions of either intellect or motor power, or both, we are irresistibly drawn to the conclusion, that when they produce methomania, they do so by the production of positive brain-disease, manifested by morbid appetite or desire.

An obvious corollary would then be, that all cases of methomania are produced by positive brain-disease, whether such

disease be produced by the causes just enumerated, or the habitual and excessive introduction of alcohol or other similar agents into the substance of that organ, or be inherited. This desire for stimulants seems to arise from a depressed or impaired vitality, an instinctive consciousness of which creates a longing for the means of improving or relieving it by stimulation. The second reason for believing that it arises from brain-disease we may advance is, that this disease is hereditary, in the same manner that insanity, epilepsy, syphilis, consumption, and other well-known diseases are hereditary. This fact, established as it is by an enormous amount of miserable example, presents the most frightful aspect of this whole subject.

Hereditary inebriety has been an admitted fact for many centuries. Thus Aristotle is reported as declaring that "drunken women bring forth children like unto themselves;" and Plutarch says that "one drunkard begets another." Dr. Carpenter states that all evidence upon the subject not only goes to show that the intemperate use of alcohol aggravates the operation of other causes of insanity, but that it has in itself a "special tendency to produce idiocy, insanity, or mental debility in the offspring." He further remarks: "Looking to the decided tendency to hereditary pre-disposition in the ordinary forms of insanity; looking also to the fact that any perverted or imperfect conditions of the nutritive functions established in the parents are also liable to manifest themselves in the offspring (as in the case of gout or tubercular disease), we should expect to find that the offspring of habitual drunkards would share with those of lunatics in the pre-disposition to insanity, and that they would, moreover, be especially prone to intemperate habits. That such is the case, is within the knowledge of all who have enjoyed extensive opportunities of observation." The same author quotes from a report of the physician of a lunatic asylum the following statement: "The drunkard not only injures and enfeebles his own nervous system, but entails mental disease upon his family. At present I have two patients who appear to inherit a tendency to unhealthy action of the brain from mothers

addicted to drinking; and, another, an idiot, whose father was a drunkard." It is believed by some authors that parents give to their children only those qualities or powers and tendencies to diseases and propensities which may be most conspicuous in them at the time the creature is begotten. I have yet to see the first case in support of the doctrine that a child begotten during an accidental fit of intoxication by a parent of sober habits, as a rule, is liable to inherit either idiocy or methomania. But that the permanent alteration and diseased constitution of the brain, as an organ, should transmit its peculiarities to the progeny in some form, there is too much evidence to dispute.

Says Dr. Maudsley, in his learned work on the Physiology and Pathology of the Mind, p. 228: "The influence of alcohol upon the mental function furnishes the simplest instance in illustration of the action of a foreign matter introduced into the blood from without; here, where each phase of an artificially produced insanity is successively passed through in a brief space of time, we have the abstract and brief chronicle of the history of insanity, because the action of the poison upon the nutrition of the nervous centers is quick and transitory; but we have only to spread the poisonous action over years, as the drunkard does, and we may get a chronic and enduring insanity, in which the insane phases of drunkenness are more slowly acted, but if death puts a stop to the full development of this tragedy in his life, we may still not be disappointed at seeing it played out in the lives of his descendants; for the drunkenness of the parents sometimes observedly becomes the insanity of the offspring."

How long it will take the more or less constant presence of alcohol in the substance of the brain to beget a transmissible disease of that organ, is a most interesting but difficult query to answer. A very curious but significant account of an instance, touching this inquiry, is related by Dr. Turner, in one of his reports of the Inebriate Asylum. "Three children were born to habitually inebriate parents, and were all three idiots. By some means, not stated, these parents reformed and lived temperately several years, during which period of

temperance, two more children were born, and were active and intelligent. Finally, the parents again fell into inebriety, and had two more children, both idiots."

Whether the mental disease thus transmitted be especially manifest in the motor or intellectual system, the additional disposition to take stimulants is more or less strongly marked in a very large percentage of the cases. The investigations of Dr. S. B. Howe, reported to the Massachusetts Legislature twenty years ago, upon this subject, have been fully supported by all later observers. Out of 574 idiots, whose condition and ancestral history Dr. Howe carefully inquired into, he found it possible to get reliable information of the habits of the parents of only 300 of them. Out of these, the parents of 145, or nearly 50 per cent., were found to have been notoriously habitual drunkards. The degrees of mental disease, or absence of mind, varied in these 145 children, from that of simple feebleness to the most utter idiocy. But amid this wreck of mind and body, a craving for alcoholic stimulants was almost uniformly present among these pitiable progeny of inebriety. Dr. Howe remarks of them, that they were "deficient in bodily and vital energy, and predisposed, by their very organization, to have cravings for alcoholic stimulants." A very intelligent reviewer of Dr. Howe's report, makes the following remarks upon the subject of this propensity to stimulata in the children of the intemperate:

"Many of these children are feeble, and live irregularly. Having a lower vitality, they feel the want of some stimulation.

"If they pursue the course of their father, which they have more temptation to follow and less power to avoid than the children of the temperate, they add to their hereditary weakness, and increase the tendency to idiocy in their constitutions, and this they leave to their children after them." Dr. Anstie says, in his article on Alcoholism, "Reynolds' System of Medicine," "The sufferers from this disease are, I believe, usually descended of families in which insanity, and often insanity of the same type, is hereditary."

I need not accumulate more evidence of this character, which it would be easy to do. The fact is, beyond a doubt,

established, that a diseased brain and body, as the results of alcoholic poisoning, manifest by methomania, transmit their acquired or inherited habits and propensities to the offspring. And the fact is striking, that the organ which has suffered most in the parent is, with few exceptions, the one most affected in the child. The child has, in fact, inherited the brain-disease of the father or mother, or both. It is not an inheritance of an accidental condition, such conditions are not transmitted. The parent who has accidentally lost a leg, or the mobility of a knee, or has lost an eye, or a tooth, does not beget one-legged, stiff-jointed, one-eyed, or toothless children. Positive alterations of the vital organization of the economy are alone transmitted as acquired or inherited disease. Methomania is so transmitted, therefore, it is the expression of a positive disease. We can no longer doubt the truth of this doctrine. It has been doubted too long already. It is clearly the duty of every physician in the land to know it, to acknowledge it, and to promulgate it.

No more truthful or important sentiments were ever uttered than are those which follow, written by Dr. Howe, a score of years ago: "If ever," says he, "the race is to be relieved of one tithe of the bodily ills which it is now heir to, it must be by a clear understanding of, and a willing obedience to, the law which makes parents the blessing or the curse of the children; the givers of strength, and vigor, and beauty; or the dispensers of debility, and disease, and deformity." We have seen with how much truth and propriety he might have added —and hands down to them a disposition to sobriety and virtue, or blasts them for time and eternity with a propensity to intemperance and vice.

As the last reason we shall adduce for the belief that alcohol produces a positive brain-disease, we will mention the fact that many of the symptoms recognized as produced by alcoholic poisoning upon the brain, are controlled or cured by the same medicinal agents as are known to be effective in various brain diseases, such as epilepsy, chorea, etc. Such agents are digitalis and the oxide of zinc: the former a well-known remedy in epilepsy, as well as much vaunted in delirium tremens,

and the latter has long enjoyed a high reputation in epilepsy and other diseases of the brain, while Dr. Marcet, of London, has lately written a book about its virtues in what he terms Chronic Alcoholic Intoxication. In justice to my own convictions, however, I must be permitted to remark, that this therapeutical evidence of a similarity between epilepsy and alcoholic disease is not, in my estimation, of the most convincing character. As others entertain a higher estimate of the value of the curative effects of both digitalis and oxide of zinc in the diseases mentioned than I do, I present the reason for any weight it may carry. Dr. Anstie, in his article on Alcoholism, subscribes to the efficacy of the oxide of zinc in this disease. But it would appear, that with all the reasons heretofore advanced, no additional ones would be required to establish the truth of the proposition, that methomania is a manifestation of brain-disease.

While the line of argument I have followed has been in some respects unusual among writers upon this subject, the conclusions arrived at are not different from theirs. Methomania has been regarded by the highest medical authorities for many years as just as much a mental aberration resulting from diseased brain as suicidal or homicidal monomania. In support of this statement, I feel that no excuse will be required for quoting the following authorities: Dr. Hutcheson, in his report of the Glasgow Lunatic Asylum, published more than a quarter of a century ago, treats of it as a form of mania, as a brain and mental unsoundness, which renders the victim of it irresponsible for his acts during its paroxysms. Dr. Carpenter, in his essay on Alcohol, written a few years later, speaks of it as "one form of insanity," and as generally having a sufficiently peculiar relation to alcohol to demand a notice of it in such a paper. Forty years ago, or more, Dr. Woodward, Superintendent of the Lunatic Asylum at Worcester, Mass., wrote a pamphlet upon this subject, urging the establishment of an asylum for the care of these persons, on the ground that they were the victims of a disease over which they had no control, and which rendered them irresponsible for their acts, and dangerous if left at large. About the same

date, Dr. Roisch, a French writer, published a paper upon the effect of the excessive use of alcoholic drinks, and is credited by some authors with having first called the attention of the profession to methomania as a disease. Dr. T. E. Turner, the distinguished founder of our State Inebriate Asylum, in his report to the Legislature, in 1864, speaks of this disease in the following language:

"Every case of inebriety is a suicidal case of insanity which needs the control and medical treatment of an asylum more than any other class of insane."

It must not be forgotten, while studying these effects of alcohol, that there are many other substances which, if employed in the same manner, and for equal time, produce permanent derangement of the brain cell-work. Of those may be mentioned opium, belladonna, stramonium, Indian hemp, and tobacco. The disturbing influence of these substances upon the nervous centers, each one differing more or less from the other, is too well understood to require mention here. These differences, however, indicating what is known or termed elective affinities, a peculiarity before referred to, as marked in alcohol and strychnine, promise to furnish us more definite knowledge as to the diseased condition of the tissue elected, than we have hitherto been able to obtain. I allude to the elective affinity, if it may be so called, which produces the diseases of the optic nerve in those addicted to the more or less excessive use of tobacco. Tobacco-blindness, or amaurosis, is attracting much attention, and bids fair to open new fields of pathological study. While atrophy of the optic nerves, resulting from suspended nutrition, and slow disappearance of its capillary blood-vessels, is demonstrated by both the ophthalmoscope and the microscope to be the condition here, may not the same condition of the brain follow the use of alcohol, or the narcotics mentioned?

Dr. Tyler, whom we have before quoted, and whose opinions we regard as possessing the greatest weight, speaks of this affection as follows: "Pathological investigations show that the brain is changed from a healthy to a diseased state by the action of alcohol. Healthy thoughts and healthy moral senti-

ments are not evolved by a diseased brain. To its possessor we attach no moral responsibility. An inebriate has a diseased brain. No will or agency of his can bring forth therefrom other than diseased mental and moral products. A person who is governed by an uncontrollable appetite, or by any uncontrollable influence, is not a responsible being, and should be so treated."

Dr. Ray, the present Superintendent of the New York State Inebriate Asylum, and late Superintendent of the Washingtonian Home, Boston, in his report for 1867, says: "The extent to which the morbid craving for stimulants, and the infirmity of will in resistance, which combined constitute the disease, having its source and sustenance in the impaired functional activity of the various organs of the body, can only be appreciated by one who has carefully observed it in a large number and variety of cases. As a disease, its character is most complex and obscure, involving as it does abnormal conditions of both body and mind, and varying in every case with individual temperament and characteristics."

A commission appointed by the State of Massachusetts some four years since, to report upon the condition of the asylums of that State, in speaking of this form of insanity, classes it as a disease under whose paroxysms or influence the victim should be cleared from criminal responsibility. Under the conviction that the methomaniac is a victim of an uncontrollable desire, and therefore dangerous both to himself and those about him, and hence a fit subject for the interference of the State, more than fifteen hundred medical men of this State signed a petition to the Legislature in 1857, in favor of the establishment of an asylum for that purpose. In that petition we find the following paragraph:

"Without such an institution, the physician has been compelled to turn from his patients discouraged, disheartened, and defeated, and the victim of this painful malady has found a drunkard's death and a drunkard's grave. With this institution we can save hundreds who are now crowding our insane asylums, inundating our courts, dying in our prisons, and perishing in our streets." Dr. Anstie, in his article on Alcoholism,

"Reynolds' System of Medicine," says of methomania: "It is, in truth, rather a variety of constitutional insanity than of alcoholic disease, but as the outbreaks owe many of their characteristic symptoms to the influence of drink, the disease requires notice in a treatise on alcoholism." If, after a review of the facts we have here laid before it, there shall still be found a mind so conservative as not to admit them as evidence of the existence of such a disease as methomania, which more or less seriously impairs the responsibility of its victim, then I have little hope of its conviction unless in some evil hour it become a subject of the disease.

I confidently believe, however, that but few such will be found, and I therefore will proceed, upon the ground that it is admitted, to speak of some of the more prominent symptoms of the disease. The essential and diagnostic sign of this disease is an irresistible desire to take alcohol till intoxication is produced, and to continue that effect for a variable time. A glass once or twice, daily, or, indeed, any moderate use of stimulants, will not satisfy this desire. Short of positive, deep, and prolonged inebriety, there is no relief of this diseased desire. It is not a pleasure of taste, as numerous very ludicrous instances of drinking whole glasses of fluid, before detecting the fact that it was not the liquor supposed, sufficiently attest.

No person can be more wretched than the victims of this desire appear to be, until they have fully gratified this insane impulse, and no arguments that can be presented to them, not even their own thorough convictions of the evil and the danger of so doing, have the slightest effect in staying their onward course to destruction. This desire may manifest itself rather suddenly and present a most vehement character, the unhappy victim being continually most miserable unless kept continually drunk.

This is the form usually known as acute methomania, and is comparatively rare. Being the product of some accident or severe disease, it is generally promptly relieved by treating the diseased state of body which produces it, and the relief is usually permanent. But a far more common form is that

in which the person is seized at more or less long intervals. This is called the periodic methomania. I have never seen a good description of it except the one given by Dr. Hutcheson, and quoted by Dr. Carpenter, and feel that I can give no better idea of it than is given in that description. "The individual," says Dr. Hutcheson, "thus affected abstains for weeks or months from all stimulants, and frequently loathes them for the whole period. By degrees he becomes uneasy, listless, and depressed, feels incapable of application, and restless, abandons business, and begins to drink and continues to till he is intoxicated. This he continues till sleep ensues, which he awakes from only to seek again the intoxicating dose, and so he continues on for a week or more. Then a feeling of disgust and positive loathing for his intoxicating drinks comes on, attended generally by anorexia and vomiting, a feeling of apathy and depression follows, he is the prey of remorse, regrets bitterly his infirmity, often contemplates, and even commits suicide to terminate his misery."

"His vigor, however, returns, he goes with renewed diligence to business, and freshly determines never again to yield to his malady. But, alas, sooner or later the paroxysm recurs, and the same scene is re-enacted, till, ultimately, unless the disease be checked, he falls a victim to the physical effects of intemperance, becomes maniacal or imbecile, or the intervals becoming shorter and shorter till none takes place between them, and he falls into the deplorable state of chronic or continual methomania, a state in which the patient is incessantly under the most overwhelming desire for stimulants."

No exhibitions of the maniac can be more indicative of insanity than are the ungovernable impulses to intoxication that move these persons. In all the forms of the disease, the patient is totally incapable of self-control. There is no motive of business that has any weight against it; there is no consideration of family, or tie of friendship, that in the least influences him to resist; and even physical mutilation and the vilest personal debasement are at times gladly submitted to for the purpose of getting the means to appease this devouring impulse. An account illustrative of the strength and

danger of this diseased impulse, is given by Dr. Mussy, of a methomaniac of the chronic variety, who was put into an almshouse. After making many unsuccessful efforts to procure rum, he at length hit upon the following device, which was successful:

He went into the wood-yard, seized an axe, and, placing his hand upon a block, cut it from the arm at a single blow. With the bleeding stump raised, he ran into the house, crying, "My hand is off! Get some rum! get some rum!"

In the confusion of the moment, a bowl of rum was brought, and plunging the bleeding member of his body into the fluid, he raised the bowl to his mouth, drank freely, and then exultingly exclaimed, "Now, I am satisfied!"

What maniac could be more regardless of physical pain? Truly did Dr. Hutcheson say that such a person "is dangerous to himself and others, and, however responsible he may have been for bringing the disease upon himself, his responsibility ceases as soon as he comes under its influence." Another peculiarity of this disease is that it seeks solitary gratification, and in this respect it resembles some forms of recognized mental derangements. Dr. Anstie says, in his article on Alcoholism, "Reynolds' System of Medicine," that acute melancholy is seen in this disease presenting the usual form of this mental affection, "but it is marked by a special tendency to suicidal acts." Dr. Hutcheson alludes to this change in social character and sentiment, saying, that the patient derives no pleasure from society, for he generally avoids it.

The motive for the secret gratification of this impulse has appeared to me to be a desire to keep the fact hidden from the world. The positiveness and the persistence with which these victims will often deny having taken any stimulants, and, much more, having been intoxicated, are as strong an evidence of their moral, if not general insanity, as can be presented. Their cunning and ingenuity in explaining their symptoms, taking care to make no allusion to the true cause, have no counterpart except in the cunning and deceit often found in the truly insane. Dr. Tyler very truly remarks upon the deadening influence of this disease upon the moral sensi-

bilities of large numbers of its victims, that, "they turn to whatever breeze is blowing, and change their position with the utmost facility to accommodate all persons and circumstances, whenever this is necessary to carry out a selfish plan or purpose, with no regard for truth."

This statement is eminently truthful in respect to all attempts to conceal their disease. I have noted that the secrecy observed by these patients in the paroxysms of the disease, keeps pace with their intellectual powers; as that fails, they become more and more indifferent to observation, and finally perfectly shameless.

An intimate acquaintance of mine left home and hid himself away in some obscure street whenever he felt the paroxysm approaching, and was not generally found before his attack passed off, when he would return to his house. He at length died in the garret of a miserable grog-shop, his name upon some articles of his clothing giving the only clew the inmates of the place had to his residence and family. There was evidence in his case that death ensued from opium taken for suicidal purposes, at about the termination of the paroxysm. A common practice among these persons is to shut themselves up during the attack, and give orders as to the statement of the character of their ailment to be given to these who may call to see them.

So far as my observation enables me to form an opinion, I think this habit of concealed drinking may be regarded as a diagnostic sign of methomania. I have not been able to find any other reason for it. In course of time, this concealed drinking becomes more public, but as a rule it is still solitary indulgence. It is not to be confounded with convivial drunkenness, and it is greatly doubted by some whether the occasional intoxication at the festive board ever leads to methomania, in persons who do not inherit, or accidentally possess, a decided predisposition to the disease. There can be no doubt that we constantly meet with persons who consume more alcohol annually than many methomaniacs, but who are never intoxicated, and who can stop the use of it at any moment without much, if any, inconvenience. While some

become intoxicated at every dinner-party, they eat their dinner quite as well without wine. This, it is easily seen, is an entirely different condition from methomania. The habits which I regard as indicating methomania are: 1. Periodic secret drinking to intoxication, attended by studied secrecy regarding it, and persistent denial of the act. 2. Periodic solitary drinking to drunkenness, though not in secret, attended by the same determined denial of the act. 3. Gulping down alcoholic liquors on all possible occasions to drunkenness without regard to taste or quality.

It would be an error to suppose that all cases of methomania refuse to confess their affliction. Most of them sooner or later have confidants to whom they unbosom their afflictions, but as to general confession the rule here stated is true. During the paroxysms the patient abandons the most urgent business, and, to get the means of gratifying his craving desire, disposes of clothing and jewelry, and even pledges estates and beggars his family. I have often noticed that the very fact of having extraordinary or unusually important or difficult business to transact, seemed to overwhelm the will and courage of these persons, and to bring on prematurely an attack. So common is this, that the unreliability of the methomaniac for any urgent and important work is proverbial, they always being nearly sure to disappoint when most needed. This is, no doubt, to be accounted for by the fact that the mental as well as physical vigor is more or less greatly impaired by the disease, so that the patient is really unequal to the application required for him, and feels himself so.

Dr. Carpenter alludes to this subject by saying that, "besides the positive diseases, a premature exhaustion of nervous power, manifest in the decline of mental vigor, and of nervo-muscular energy, are ranked by common consent among the consequences of habitual excess in the use of alcoholic liquors." The finding of a man drunk, and absent from business that he knows to be important, I, therefore, should at once regard as evidence of the existence of methomania in his case.

I have purposely deferred to the close of these remarks, the consideration of the personal danger which the family or

associates of the methomaniac are exposed to during different periods of his paroxysms. Impelled by some insane hallucination, or by the frenzy of tormenting desire, during the maniacal excitement of intoxication, or the terrors of delirium which succeed it, the inebriate who would dismember his own body would just as soon destroy the life of his dearest friend or relative. Of all the diseases of humanity, none is so dreadful as the insanity of the methomaniac.

Says Dr. Turner, in his graphic description of the victim of this disease: "Extreme poverty, hideous deformity, mutilation of limbs, deafness, blindness, all those, sad as they are, leave alive the human affections, and admit the consolation of sympathy and love;" but this malady "so entirely changes the heart that no affection can grow upon it, and the unhappy victim sinks and dies, or is so excited as to crush the life out of the mother who bore him, as coolly as he would trample upon a serpent." Then the doctor relates that most awful case which occurred in Madison county, in this State, a few years ago, to illustrate his statement. A young man, during the delirium of a paroxysm of methomania, murdered both his father and mother, and cut out their hearts, which he roasted and ate. He was brought into court for trial, but Judge Gray declined to try the case, on the ground that his court had no jurisdiction in the case of a crime for the commission of which there could be no motive in the human heart. It was, indeed, an unequivocal admission, by high judicial authority, that methomaniacs may be irresponsible for their acts. These morbid perversions of feelings and desires, so frequently seen in the insane from any cause, are peculiarly liable to appear in the methomaniac, and liable to impel the victim to acts of an appalling character.

With these facts before us, and the presence of the symptoms of methomania which we have just described, in any given case, considering the total loss of self-control during the paroxysm, the disregard of all business and domestic obligations, and the prospective ruin of family, it becomes, beyond a doubt, a proper question for serious attention, whether it is not only merciful to the patient and his family, as well as a

matter of safety to them and to the public, that he should be prevented from committing crimes and from squandering property by placing him under restraint, rather than allowing him to incur the risks of trial for crime, and his family that of reduction to penury, by permitting him the liberty which his disease irresistibly impels him to abuse. The application of the principles and facts which I have endeavored to establish, to acts of profligacy, to acts of bad faith and forfeiture, such as of accident or life insurance, to acts of social and family outrage, and to acts of crime, I leave to members of the legal profession, in full confidence that they will do the subject the justice it deserves.

METHOMANIA.

BY JAMES J. O'DEA, M. D., N. Y. City.*

"Madam," said Dr. Samuel Johnson, to a lady with whom he was once conversing on the subject of intemperance, "I can be abstinent but I cannot be moderate." Such is an admirably terse statement of the case of many living men and women, who, though strongly tempted to indulge their propensity for ardent spirits, are fortunate in possessing a self-control as rigid and uncompromising as that of the illustrious man above quoted. But there are others not so happily endowed. As a matter of every-day experience we meet with many shades of distinction among mankind, in regard to the appetite for alcoholic drinks, from the few who positively dislike them, or the very large number who use them in moderation, to the many whose lives are little else than a repetition of drunken debauches, and who have only too much reason to exclaim with the great dramatist:

"Oh! thou invisible spirit of wine, if thou hast no name to be known by, let us call thee devil!"

From among the latter we may single out a class having a peculiar character and physiognomy of its own. It has probably happened to every one of us to know people—acquaintances, friends, relatives—who are, to all appearances, hopeless drunkards. They are either constantly intoxicated, or they abstain only when there is no temptation to drink; but let them indulge ever so little and their propensity assails them with a force which no consideration is able to restrain. Such people are the despair of their friends, the torment or ruin of

* Read before the New York Medico-Legal Society, 1868.

their families, the scandal of their community. Seventy times seven they fall and are lovingly raised up. They express contrition, they make firm promises of amendment, and, for a little while, seem to have mastered their propensity, but, sooner or later, it renews its assaults, and obtains an easy victory over them. What is the meaning of this phenomenon? Is it simply an indication of moral obliquity, or does it point to something radically wrong in the physical organization of the individual, to a diseased or disordered state of his nervous system obedient to the well-known laws of all the neuroses, hérédité, periodicity, and interchangeability? In a word, can we pronounce it to be a form of insanity? Such is the question submitted to our consideration; but before entering upon it, I think it will be advisable to take a rapid survey of the recent progress of opinion respecting the action of alcohol on the human system.

Speaking in a general way, it may be declared that the total abstainer is a healthier man than the tippler, and, further, that the difference between the consumer of a very little alcohol, and the consumer of a good deal, is mainly one of degree. The steady use of alcoholic drinks, for even a comparatively short time, lessens the vigor and elasticity of the body, impeding both its nutrition and the play of its faculties. As a consequence of its depressing effect on the lungs, skin, and kidneys, less carbonic acid, water, and urea are eliminated, and the system becomes charged with an accumulation of imperfectly oxidized substances, such as uric and oxalic acids. The effect of alcohol in inducing chirrosis of the liver is long familiar to the profession, and, recently, Dr. Fox has drawn attention to an analagous change in the stomachs of inebriates, marked by chronic inflammation of the mucous membrane and its consequents, hypertrophy of interglandular connective tissue and obliteration of glandular structure. Owing to this irritative action on the structures of the stomach, and also to the obstruction of healthy tissue metamorphosis occasioned by the same agent, there is a diminishing appetite for food, and a gradual decline in the enduring powers of the body. An employer in Scotland tested this

latter fact in the case of a workman who abstained from alcoholic beverages for eight weeks. On subsequently referring to the wages-book, it was seen that during this time he had earned about sixty-eight dollars, gold, as against fifty-three dollars gold, which was all he had made in the eight preceding weeks during which he indulged. As a "teetotaler" he earned fifteen dollars more than as a moderate drinker.*

If we understood the physiological purpose which alcohol serves when taken into the system, we might learn the secret of that craving for the stimulant, which is, and always has been, so universal. It would be difficult to find a nation ignorant of the use of spirituous beverages in some form or other. From the arrack of the Hindoo, to the vodki of the Russian, the intermediate list is a long one, and includes every variety of spirits distilled or otherwise produced from the various cereals, rice, cocoa, agave, maize, and potatoes.

Not to occupy too much time with the various attempts that have been made to account for a fact so universal as the prevalence of this desire for stimulants, I may briefly run over the most important of those which have engaged the attention of scientific men during late days.

Liebig, inferring from the chemical composition of alcohol what its use in the body should be, propounded the theory of its function as a heat-producer by union of its carbon with oxygen to form carbonic acid. More recent observations throw some doubt upon this explanation. Thus it is objected that persons to whom alcohol has been given expire less carbonic acid than usual, and that the temperature of their bodies, as tested by the thermometer, is lowered instead of raised, as should be the case were this agent a heat-producer. But the conclusions of the celebrated Paris Commission of 1860, were the chief agents in discrediting Liebig's theory. They are as follows:

1. Alcohol is not food.
2. In a feeble dose it excites, in a large dose it stupefies.
3. It is *never transformed* in the organism.
4. It accumulates in the brain and liver.

* *Frazer's Magazine*, September, 1868.

5. It is ejected entire and pure by the lungs, by the skin, and especially by the kidneys.

6. It is a pathogenic, causing functional disturbance and organic alterations in the brain, liver, and kidneys.

Lastly, these inferences of the commission are in their turn disputed by M. Edmond Baudot, in the *Union Medicale* for September and November, 1863. In regard to No. 3, he remarks that, though there is no direct proof of the transformation of alcohol in the system, there is strong presumption that some is really there transformed. He has convinced himself by experiments that very little alcohol is eliminated by the kidneys, and only enough by the lungs to give a faint reaction with the bichromate of potash test. He holds that only the portion of which the organism is intolerant, as being more than it can safely bear, is eliminated as alcohol, and that the rest remains in the body, and undergoes transformation into aldehyde, acetic, and oxalic acids.

The last year or two has witnessed a renewed interest in this important question. All the more recent authorities agree that alcohol has no histogenetic properties whatever, but there is still a decided difference of opinion as to whether it is a force producer. Dr. Anstie seems to favor the theory propounded by Liebig. He holds that it is oxidized in the organism, and undergoes a change into carbonic acid and water; that, in so being acted upon, it contributes useful force to the body, and, consequently, that it has an absolute dietetic value. Dr. Parks, on the other hand, while admitting the destruction of alcohol as above indicated, refuses to see in this fact alone any reliable proof of its dietetic value. To pursue this interesting controversy any further would lead us too far away from our present purpose. Whatever may be the ultimate decision of scientific men, to Dr. Anstie belongs the great merit of having contributed one positive truth to what knowledge we possess upon the subject,—the important fact that the healthy human frame can safely dispose of one ounce and a half of alcohol in the twenty-four hours, which is the limit of healthy indulgence; all indulgence beyond that amount being not only excessive, but disease-producing.

Now, with regard to one of the consequences of excess, statistics and pathological observations both go to prove that the habit of frequent indulgence in alcohol is a really potent cause of many diseased conditions of the nervous system highly favorable to insanity.

First, of statistics. Most systematic writers on insanity give a proximate estimate of the percentage of cases of mental alienation attributable to the abuse of ardent spirits. Bucknill and Tuke tell us in their work on *Psychological Medicine* that the report of the commission in lunacy, for 1844, gave eighteen out of every hundred as the number of insane from this cause, and add that "in America the proportion is stated to be very much higher among the patients admitted into State asylums. But, we believe, that all these figures fall far short of presenting a true picture of the complex influences of intemperance in inducing, directly or indirectly, derangement of the mental faculties." Dr. Nichols, in some recent remarks on the Government Hospital for the Insane, says: "The reports of the institutions for the insane, both of this country and of Europe, show that intemperance is a common cause of insanity in its ordinary forms. The authorities also almost unanimously agree that inebriety sometimes becomes an insanity . . . characterized by a total abandonment to extreme indulgence, regardless of the most sacred claims and pledges, and by more or less impairment of the moral and intellectual powers of the individual."*

"Of the physical causes of insanity," says Dr. Maudsley, "intemperance occupies the first place; acting not only as a direct cause, but indirectly through the emotional agitations incident to an irregular life of dissipation and excess." And Dr. Hood† places alcoholic excesses next after old age, as the most potent physical cause of insanity.

Secondly, of pathological observations. The experiments of Percy and others have established the great rapidity of the absorption of alcohol from the stomach, and its strong affinity for the nervous centers. Now, alcohol irritates these centers,

* *American Journal of Medical Sciences*, January, 1869.

† Quoted in Aitkin's "Practice of Medicine."

and induces changes in their nutrition, which prove both structurally and functionally disastrous to them. And furthermore, the series of morbid alterations due to its repeated action as an irritant bears a striking general resemblance to those witnessed among many of the insane from other causes. If the brain of an unreclaimed drunkard be compared with that of a man who has died insane, both will often exhibit the same hardness, the same shriveled nerve-cells, and the same development in the intercellular spaces of fibrous tissue of a low grade of vitality.

It would, therefore, seem a well-attested fact that organic changes, similar to those experienced among the insane, are developed in the nervous centers of the drunkard during his career of indulgence, and that by his own act he puts himself on the very verge of madness. Some trivial circumstance, like the feather that broke the camel's back, may at any moment transform him into a lunatic.

Methomaniacs have been variously classified. For example, they have been arranged as (1) those in whom the disease is connate; (2) those in whom it is adventitious and developed either by prolonged excessive indulgence alone, or by this and the supervention of some other agent depressing to the nervous system; (3) and finally, those characterized by a periodic and uncontrollable craving for drink, suddenly appearing after a total abstinence of long or short duration. However, as a more simple arrangement will best accord with the object of this paper, I shall divide methomaniacs into two classes: (1) Methomaniacs in consequence of a long series of debauches; (2) methomaniacs by inheritance.

(1.) How long a course of immoderate tippling may be continued before the development of methomania it would be impossible to say. In endeavoring to form an opinion on the subject at all approximating to correctness, a variety of circumstances would have to be taken into account. Doubtless in some abnormally-constituted individuals, with a hereditary tendency to nervous disease, a very limited number of debauches might be sufficient to develop it; while other persons with robust constitutions, and no special tendency to any

form of neurosis, might indulge to excess for a lifetime without manifesting a single sign of insanity. This is all I feel justified in saying at present on methomania as a disease developed in consequence of frequent excessive indulgence in alcoholic stimulants.

(2.) The hereditary transmission of a propensity to drunkenness (hereditary methomania) is a subject of considerable social and medico-legal importance. Few allied questions are more fully supported by evidence than the transmissibility, not merely of the drunkard's degenerate constitution, but even of his appetite for intoxicating drinks. The well-known instance recorded by Gall of a drunken Russian family whose son, only five years of age, was already on the high road to inebriety, is but one of the many examples of a like nature which might be cited. I must not, however, omit the striking picture given by Morel of the afflictions of four generations of a family in consequence of alcoholic abuses in the first, for nothing more startling and conclusive can be found anywhere upon the subject. "The great grandfather of the family was a dipsomaniac, and so complete was the transmission of the disease, that the race became totally extinct under the well-marked phenomena of alcoholic poisoning and degeneracy. The effects entailed were: in the first generation, alcoholic excesses, immorality, depravity, brutish disposition; in the second generation, hereditary drunkenness, attacks of mania, general paralysis; in the third generation, sobriety prevailed, but hypochondriasis, lypemania, persistent ideas of persecution, homicidal tendencies, were expressed; in the fourth generation, intelligence was but feeble, mania became developed at sixteen years of age, stupidity, running on to idiocy, and to a condition involving extinction of the race."*

Very few, I think, will venture to deny our right to classify methomania among the forms of insanity. This being admitted, the query arises, whether the progenitors of the generation in which it is manifested must necessarily have been drunkards. This question involves a consideration of

* Morel; quoted in Aitkin's "Practice of Medicine," vol. i., pp. 145, 146.

the hereditary transmission of disease, a subject which, though demanding some of our attention, is much too large and recondite to be satisfactorily treated at present. Those who may wish to pursue the topic further will find it very fairly discussed in the *American Journal of Medical Science* for April, 1868, in a review of Dr. Griesinger's "Mental Pathology and Therapeutics." Here, however, we are obliged to confine ourselves to the few following observations.

By some authorities no case of disease is considered hereditary unless it has already appeared fully developed in a parent or grandparent. By others a case is deemed to be also hereditary if the disease has shown itself in an uncle, aunt, or cousin. In other words, the latter concede that the transmission may be along the collateral as well as the direct line. Again, in regard to the form in which the hereditary taint is transmitted there are differences of opinion, some maintaining that the full-blown ailment of the parent is inherited, while others hold that most commonly the offspring receives only a morbid condition of organism having a strong tendency to repeat the parental variation from health. For my own part, I believe that what the offspring most commonly inherits is a certain condition of organism very prone to take the shape of the parental disease. Thus, the consumptive or epileptic parent more frequently transmits the tubercular or nervous diathesis than the concrete diseases—consumption and epilepsy. In this view the insane man does not bequeath to his descendants any particular form of insanity so frequently as a general morbid nervous condition very prone to develop into some definite form of madness. Coinciding with this law, and confirming it, is the fact, amply attested by experience, that diseases of the nervous system though radically one, are manifested differently in different persons, or in one person at various times.* Now, the one factor of prime importance

* The following remarks from Dr. Gull's address on "Clinical Observation in Relation to Medicine in Modern Times," delivered at the meeting of the British Medical Association, held last year in Oxford, are pertinent to the above question: "If we trace the history of morbid brain-force through the various members of a family, we shall often recognize a great variety of

which serves to distinguish the methomaniac from the sane drunkard is this taint of hereditary disease. A man of sound mind may become a drunkard by force of evil associations and temptation, as under similar influences he may learn to be a gambler or a libertine. But the methomaniac may be a model man in every respect save the one of his propensity to drink, and this he owes, not to the exercise of his free will, but to a pitiable flaw in his nervous organization which deprives him of the power of resisting his special temptation, and thus, negatively, forces him to give it unrestrained license whenever it arises. Were such a person to marry and beget children, there would be little risk in predicting that one or more of them would, in the course of life, become methomaniacal.

You may infer from what I have now been saying, that methomaniacs are not always steady, hard drinkers. In fact, the impression seems to be, that those who inherit the disease are commonly given to periodic drinking. At all events, the periodic form of the malady is that best suited for study, both in consequence of its saliency and simplicity. In the course of our experience we meet every now and again with a person whose case answers to the following description : The inheritor of a nervous organization whose tendency may have culminated in some one or other of the neuroses—epilepsy, chorea, neuralgia—for a while sober, and attentive to business, becomes restless, moody, and thoughtful. His disposition, in fact, changes, he loses his relish for society, and his accustomed appetite for food. After this state has lasted a little while, he suddenly abandons all his duties, and addicts him-

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related phenomena, which, in nosological classification, are separated and considered as distinct. The intellectual disturbance in one may appear as epilepsy in a second ; as mere dyspepsia and so-called acidity in a third ; in a fourth as some peculiar neuralgia ; in a fifth, if a female, in many varieties of capillary disturbances, such as amenorrhœa, vicarious menstruation, hœmatemesis, or even hœmoptysis ; in a sixth, some part of the intestinal tract, the colon chiefly, may appear to be the recipient of the morbid nerve-process, and the patient be tortured with fears of a tumor, which, though a mere phantom, is yet calculated to mislead the unwary."

self to drink. His whole nature, as I have just remarked, undergoes a most surprising change. There is scarcely an action, however improper, or a subterfuge, however cunning, of which he will not be guilty in his all-absorbing desire to gratify his craving for drink. At times he may make a public exhibition of his weakness, but more commonly he retires into solitude, that he may enjoy his propensity to its fullest extent. It may be that, as he drinks, all power of self-control wanes, and his emotions obtain complete sway over him. If, now, he is possessed by some hallucination or illusion he may commit acts of violence, even to bloodshed. After indulging for a length of time, variable according to the violence of his disease, or the strength of his constitution, the attack subsides, leaving him in a state of extreme physical and mental prostration.

In this "Anatomy of Drunkenness," Dr. Macnish has recorded a striking example of the unrelenting temptation which assails the methomaniac. One of this unfortunate class makes the following reply to the urgent remonstrances of his friends:

"Your remarks are just; they are, indeed, too true, but I can no longer resist temptation. If a bottle of brandy stood at one hand and the pit of hell yawned at the other, and I were convinced that I would be pushed in as sure as I took a glass, I could not refrain. You are very kind, good friends, but you may spare yourselves the trouble of trying to reform me; the thing is out of the question."

Obviously this is the language of despair, but it is also the language of a man who has struggled many a time against his besetting sin, and who only throws down his arms when, at last, he finds how utterly hopeless the combat is, and how completely he is worsted every time he engages with his unseen antagonist. Not that such a man's condition is really hopeless. Our inebriate asylums demonstrate quite conclusively how much temporary, nay, sometimes permanent benefit may be conferred on this unfortunate class by seclusion and medical care.

The disease under which the methomaniac labors deprives

him, therefore, of his power of self-control. On this point Dr. Hutchison has well remarked that "those afflicted with the disease cannot abstain, however convinced they may be of the impropriety of yielding to their propensity, or however desirous they may be to subdue it." With the methomaniac there is no premeditated drinking; on the contrary, he deplores his propensity, he even warns his friends of the approach of the craving, and may entreat their help to escape it. This fact is of primary importance in the diagnosis of methomania, and assists materially in distinguishing between it and the ordinary forms of inebriety.

Another feature met with among people prone to outbreaks of this disease is the great mental excitement they sometimes experience after taking only a small quantity of ardent spirits. The sane toper drinks and grows merry and bright, or stupid and sentimental, according to his temperament; but persons prone to methomania get often wild and uncontrollable after a glass or two. Last Christmas night, for example, one of this class took two "glasses" of whiskey in a saloon, and returned home in a state of such wild excitement that it required the united strength of six men to hold him. Being offered a thick porcelain cup with water to drink, he drove his teeth quite through it, and bit out a piece as large as his mouth could hold.

The disease which we have thus been considering is a transitory form of mania. It has its periods of access, of exacerbation, and of decline. Its subject often feels it coming on, and the physician may trace its stealthy approach in the changed manner, the altered feelings, the loss of appetite and rest of his patient. Its decline is marked by a general prostration of the vital powers, by satiety, disgust, nausea, and the return of the moral sense. The interval of sobriety and good conduct varies much in different individuals, but in the same individual it is pretty constant. I have known three methomaniacs pretty intimately; two were men of considerable force of intellect, one was a woman past middle life, exceedingly small in stature, and of a very emotional, sympathetic temperament. In one of the former the attacks used

to come on about every six months, in the other about every three months; in the latter about every three months also.

The storm over, the methomaniac rises up like the prodigal son, and returns repentant to his duties. But frequent debauches at last blunt his moral sense, and he ultimately loses even the feeling of shame which used to arise in him when he contrasted his feeble purpose and frequent lapses with the firm will and rational conduct of the good among his acquaintances.

The radical defect in the nature of the methomaniac is not a want of intelligence, nor yet of moral feeling, but of will, or rather I should say of a will strong enough to resist and subdue the rebellious impulses of the flesh. You know how intimately the organic feelings are related to the mind. You are aware that the passions have their main roots in the abdominal viscera, and the organs connected therewith. Here we have the physiological basis of the inevitable struggle which every one experiences between the two opposing forces of the organism—on the one hand, the passions as they proceed from the lower, and, on the other, conscience, or the sum of the faculties of the higher nature. St. Paul expressed the whole idea in his words to the Galatians: "For the flesh lusteth against the spirit, and the spirit against the flesh; and they are contrary the one to the other; so that ye cannot do the things that ye would." Now the methomaniac is pre-eminently in this unfortunate position. Owing either to an inherent feebleness of will, or to the extraordinary force of his one passion it refuses to be governed; periodically it gets the bit between its teeth, and carries him where it will. This state of the case fits exactly into our idea of moral insanity, and we are consequently led to the evident conclusion that methomaniacs are insane. We see now where our subject touches the question of legal responsibility. This point, however, would require a separate treatise to do it justice; for the present, I must limit myself to one or two observations.

It will be remembered that our courts of law do not allow intoxication to be pleaded as an excuse for crime. Some other defence must, therefore, be substituted, and that of

insanity (methomania) is as likely to be introduced as any other. As this is a plea open to great abuse, it is all the more necessary that the medical expert should furnish himself with tests for discriminating between the genuine methomaniac and him who is asserted to be such on mere grounds of expediency. It has often occurred to me of late that the reckless use now so commonly made of the defense of insanity in criminal cases is very much calculated in the long run to diminish its truly great importance, at least with the public, and to engender a suspicion of its genuineness even when urged in good faith and on strong evidence. Even for this reason alone we should attentively study the essential points of difference between the methomaniac and the drunkard. I need hardly apologize, therefore, if I direct your attention to the following points which seem of great service for the purpose of this distinction :

1. An inherited or acquired tendency to insanity.
2. An irresistible desire to drink.

The former can exist without the latter, because, as we have already seen, the tendency to insanity may find a vent in various ways ; but I cannot doubt that the individual who has the irresistible desire for drink is insane. He is none the less so, be it observed, that ofttimes it is the result of his own misconduct. Whether the desire to drink is irresistible in any given individual, that is to say, whether it predominates in him in such a degree as to govern his conduct despite the promptings of conscience and the dictates of self-interest, will often be a very difficult point to determine, owing to the impossibility of reading the secrets of men's hearts ; yet, when cautiously examined and intelligently applied, it will furnish a very valuable test for separating the real from the feigned disease.

HEREDITARY DISEASES

OF THE

NERVOUS SYSTEM

UNATTENDED BY MENTAL ABERRATION.

By STEPHEN ROGERS, M.D., of New York.*

In order to intelligently apply the laws governing physical inheritance generally to inherited diseases of the nervous system, we must first fully understand and admit the fact that the brain and nerves hold the same relations to each other that the bones, muscles, and other structures composing our bodies hold, the one to the other—both the former and the latter are integral portions of single systems—and that even the two systems often suffer a common and universal disease. While manifestations of inherited disease of the nervous system are peculiarly liable to limit themselves to that system, they obey the laws of inherited diseases generally, in that any organic derangement of one of its departments may be, and frequently is transmitted to progeny in a very different form. For example, the parent may transmit a syphilis, which is affecting him in the form of syphilitic disease of the bone and its covering membrane, to the offspring, in the form of cutaneous eruptions or excoriating sores of the mucous membranes

* Read before the Society, 1869.

of the openings of the body, or both. Again, the tubercular parent may transmit his consumption of the lungs to the child in the form of tabes, or of tubercular brain-disease, or scrofulous affections of various kinds. So the man who becomes the victim of insanity is by no means certain to transmit that precise form of nervous-system disease to his children, if indeed he transmit any disease; but it may appear in quite another region of the system. Thus insanity in the parents may appear in the offspring as a disease of the motor portion, giving rise to chorea or to epilepsy; and, on the other hand, the epilepsy, catalepsy, or chorea in the parent may appear as insanity or imbecility in the child ("Maudsley on the Mind," p. 213).

It will be perceived that inheritance by variation, as is so so often seen in the transmission of individual peculiarities of form, etc., has its counterpart in this variation in the form of the disease of the nervous system transmitted to offspring. The same law that in other forms of diseases commands mothers to especially transmit to the daughters, and fathers to the sons, is especially observed in the diseases of the nervous system; and as to the general liability to inheritance, one of the most intelligent observers of this country, as relates to this class of diseases, sends me the following statement: "My experience is certainly to the effect that nervous diseases are more decidedly hereditary than any other, not even excepting the tuberculous." * Arguing from the apparent fact, that the nervous system is the foundation upon which all later structural developments of the being take place, it seems rational, that if any disease or peculiar physical conformation be transmitted, its first and most marked impress should be upon the nervous system.

Since writing these lines, the following remarks of Dr. Nathan Allen have come under notice, and I have transcribed them, as not only adding interest, but authority to this interesting point.

"As the brain and the nervous system hold the foremost

* Letter of Dr. William A. Hammond.

rank in the physical organization, in point of sensitiveness and vitality, they are the first to suffer by any derangements of a perfectly healthy, normal state of the system."

"According to a great mass of facts collected on this subject, the functions of the brain seem to be affected far more than those of any other organ" (Inherited Diseases from Intermarriage of Relatives, *Quar. Journ. Psychological Medicine*, April, 1869, p. 249).

"If," says Dr. Maudsley, "instead of limiting attention to the individual, we scan the organic evolution and decay of a family, then it is made sufficiently evident how close are the fundamental relations of nervous diseases, and how artificial any division between them sometimes appear. Epilepsy in the parent may become insanity in the offspring, or insanity in the parent may become epilepsy in the child; and chorea or convulsions in the child may be the consequence of great nervous excitability, natural or accidental, in the mother. In families in which there is a strong predisposition to insanity, it is not uncommon to find one member afflicted with one form of nervous disease, and another with another; one suffers perhaps from epilepsy, another from neuralgia or hysteria, a third may commit suicide, and a fourth may become maniacal."

Dr. Radcliffe, in his article for "Reynolds' System of Medicine" on chorea, says: "In many cases there is a distinct flaw in the family history, especially in the direction of disorders of the nervous system. Thus, out of forty-eight cases in which I have inquired into the family history, I find twenty-seven cases in which father, or mother, or brother, or sister had been, or was, the subject of one or other of those disorders, viz., paralysis, epilepsy, apoplexy, hysteria, or insanity" (vol. ii., p. 125).

Again, Dr. Reynolds says in his article on epilepsy, that he has found that hereditary taint existed in about one-third of the cases of the disease which fell under his observation. He then explains the meaning of this statement in the following language: "It is not intended by this statement to affirm that true epilepsy has existed in the parents of one-third of

the cases, but that some disease of the nervous system, more or less closely allied to that under consideration, has been present in either the parents, the grandparents, the aunts or uncles, brothers or sisters; that there has been a family proclivity to nervous disorders, in one case showing itself by idiocy, in another by mania, in a third by convulsions, and so forth."

And so we might go on indefinitely quoting authority in support of the fact that diseases of the nervous system are continually transmitted by variations, in the same manner that other diseases and individual peculiarities are, but further proof would appear unnecessary. Morel, however, relates the history of a family in which the variation of the form of transmitted disorder of the nervous system involves some points of so much interest to the subject this society has been discussing, that we cannot properly omit it.

In the first generation were observed immorality, alcoholic excess, and brutal degradation.

In the second generation, or children of the first, hereditary drunkenness, maniacal attacks, and general paralysis.

In the third generation, sobriety, hypochondria, lypemania, systematic mania with homicidal tendencies.

In the fourth generation, feeble intelligence, stupidity, attacks of mania as early as sixteen, transition to complete idiocy, with a probable extinction of the family (Maudsley, p. 215).

The point I wish to call the attention of the Society to more particularly, is the prominent position given to hereditary drunkenness in this history of intellectual and physical degeneration. It is a grave and most interesting fact, not in this instance only, unfortunately, that the parent who destroys the organization of his nervous system by alcoholic excesses, is exceedingly liable to transmit to his offspring disordered nervous systems, which become manifest in almost any form these diseases take. Thus he may be subject to maniacal attacks, to an early decay of the whole brain and nerve structure, resulting in general paralysis; to a disordered and uncontrollable passion or desire to take stimulants; to the various con-

vulsive diseases; or, sadder still, he may from the first, or sooner or later, fall into hopeless imbecility.

There are, in fact, no more striking or melancholy examples of degenerate brain organization transmitted to offspring than that produced by alcoholic excesses. This is not only a degeneration of the nervous system, but general decay, as the remarks just quoted suggest.

A hundred years ago, the great naturalist, physician and poet, Darwin, remarked, "that all the diseases from drinking spirituous or fermented liquors are liable to become hereditary, even to the third generation, gradually increasing, if the cause be continued, till the family becomes extinct."

Unlike some other forms of hereditary disease, the degeneracy of alcoholic inheritance appears to tend rather rapidly to the abolition of procreative powers, the result of a highly appropriate provision of the all-wise Ruler of mankind. Added to the statement of Dr. Darwin upon this point, we have a very modern one from a physician who has devoted much of his life to the investigation of this subject, and is to the following effect: "We do not hesitate to proclaim, as a law of almost universal application, that three successive generations of inebriates will leave no issue. The third generation may have children, but not one of these will be reared to manhood" (Turner, *Second Annual Report of the State Inebriate Asylum*, 1864, p. 11).

This same author dwells at some length upon the subject of inherited susceptibility to alcohol; and, while we are not prepared to adopt without reserve all of his views, we do not possess the data to enable us to controvert them. All, however, should be acquainted with them, for, if they are unfounded, the aggregate experience of the profession will correct them; but, if true, the more generally they are known the better for us all. He says: "There has been much speculation, in and out of the profession, as regards the cause of the fearful increase of delirium tremens and *mania a potu* within the last few years. Fifty years ago, delirium tremens was seldom seen, and when met with was found to occur after a number of years of excess in the use of stimulants. Since that period

—which was when every man, woman, and child indulged in alcoholic drinks, in accordance with the customs of the day—this peculiar type of the disease has been on the increase, and now delirium tremens is produced by a few months' excess in alcoholic drinks ; and in some constitutions we have seen it developed after a debauch of twenty-four hours. So far as our investigations have extended, they convince us that the true cause of this augmented susceptibility to the influence of alcohol, and of this increase of *mania a potu*, is to be found, not in a supposed adulterated quality of liquor used, but in a peculiar constitutional tendency inherited by the victims of the malady. The morbid conditions predisposing to delirium tremens are in these cases transmitted from parent to child."

It seems to us a question whether this augmented susceptibility to the impression of alcohol may not be due to the acknowledged preponderance of the nervous element in human constitutions, developed during the present century, quite as much as, if not more than to the cause this author supposes. From an extensive series of observations, he has established, in his own mind, the following curious, and, if true, wonderfully exact and interesting deductions, as regards the law governing this class of inherited conditions of the nervous system : "Out of 1,406 cases of delirium tremens which have come under my observation, 980 had an inebriate parent, or grandparent, or both. We believe, if the history of each patient's ancestors were known, we should find that eight out of ten of them were free users of alcoholic drinks. It has appeared to me that the child has the same condition of constitution as that possessed by the parent at the time of procreation ; that, as respects his susceptibility to the impressions of alcohol, he commences just where the parent was at the time of conception of the child; so that the child that is begotten at the tenth year of its parent's excesses—which excess, if continued, would produce delirium tremens in the eleventh year—will require but one year of excess to bring on delirium tremens."

He then adduces the following additional historic evidence upon the subject of susceptibility to alcoholic influence, which, we suspect, the ungenerous will receive *cum grano salis :* "One

of the most remarkable cases was a man of sober habits, whose daily occupation for six years had exposed him to the absorption of the vapors of alcohol. I saw him in an attack of well-marked delirium tremens which lasted twelve hours." He further quotes several authorities who have recorded similar cases. It is very unfortunate for the interests of science, that the ancestral history of these cases is not given.

Among the diseases of the nervous system universally acknowledged to be transmitted to children, in the same form, for the most part, that they took in the parent, may be mentioned chorea or St. Vitus's dance. Dr. Reeves, in his work on chorea and tetanus, furnishes a long list of authorities in support of the hereditary character of this disease, and relates his own experience as decidedly in support of the idea.

While Dr. Radcliffe does not speak of this affection, in his paper already quoted, as remarkable for transmitting itself to progeny as chorea, he remarks that "the predisposing and exciting causes of chorea would seem to be those which are common to other disease of the nervous system" (Reynolds, vol. ii., p. 125).

Most observing practitioners, however, have met with cases of chorea whose predisposing cause was unquestionably an inherited taint. But the tendency of a constitution which inherits chorea, to develop other forms of nervous-system disease, is unquestionably very strong. Dr. Radcliffe remarks upon this point as follows: "How far the occurrence of chorea implies a tendency to other disorders of the nervous system, especially to epilepsy, is a question which has not yet been fully entertained, and I cannot supply an answer from actual statistics. But this I may say, that I have frequently met with epileptic patients who were choreic at one period of their life, and that the impression left on my mind from what I have seen is, that the chances of chorea being followed, sooner or later, by some other disorder of the nervous system are too much made light of."

Epilepsy is another of the nervous-system diseases remarkable for its tendency to transmit its habit to offspring. Dr. Reynolds, whom I have before quoted in the point of its rela-

tion to insanity, remarks that "hereditary taint has been found in rather less than one-third of the cases he saw." But as that estimate included all the cases of epilepsy which presented any kind of disorder of the nervous system in the ancestry, it will be proper to here state what he concludes as to strictly epileptic transmission. "I have found," says he, "only twelve per cent. of epileptics giving a distinct history of epilepsy in other members of their families; a number which is very near to that stated by Dr. Sieveking, and not far from that given by M. Delasiauve." "There is no doubt," says Dr. Watson, "that a tendency to epileptic disease is frequently hereditary. It may be derived from parent to child; or it may skip over a generation or two, and appear in the grandchild or great-grandchild; or it may be traceable only in the collateral branches of the ancestors. This is just what takes place in other hereditary maladies."

In connection with those facts as to the transmissibility of epilepsy—preserving this form of the disease—it is important for us to remember that epileptiform paroxysms are very common in the course of an attack of delirium tremens. The most frightful epileptic attack we ever witnessed, was one which ushered in the delirium of this disease. Dislocation of one of the shoulder-joints was produced by muscular contraction alone. In another case, epileptic paroxysms were more or less continuous throughout the disease. These are cases of what may properly be termed alcoholic epilepsy, and are, so far as our observation has gone, very uniformly produced by equal application of the cause, as respects time and quantity. Now, as epilepsy is unquestionably hereditary when not produced by alcohol, is there any even plausible reason that there should exist an exception to this law in the case of alcoholic epilepsy?

As relates to the withering effect upon the intellectual faculties produced by alcoholic epilepsy, it certainly is not second to any other form; and we are therefore justified in regarding the disorganizing process going on as quite as active, as profound, and as thoroughly transmissible, as that in any other form of epilepsy. This is indeed one of the most marked forms of inheritable alcoholic disease.

Catalepsy is still another most curious disease of the nervous system, which may re-appear in the descendants of its victims. It is characterized by periodic attacks of sudden suspension, more or less complete, of sensation and voluntary power. It is not a convulsive disease, like epilepsy, but the rigidity of the whole muscular system is so great that, like a plastic statue, the extremities remain for a time in the position they may be forcibly made to take, returning slowly and almost imperceptibly, by their own gravity, to their natural place. So far as our researches have gone, they have led us to the conclusion, that as catalepsy, the disease is not often inherited; but, by variation, it is very generally inherited in the form of epilepsy, hysteria, insanity, chorea, etc. A very illustrative case of the hereditary character of the cataleptic form of the disease, running through several generations, has been furnished us by Dr. Wm. A. Hammond, Professor of Diseases of the Mind and Nervous System, at Bellevue Hospital Medical College. Under date of February 24, 1869, he writes:

"I have now under my care a very interesting case of a young lady who is cataleptic, and whose mother, grandmother, and great-grandmother, were likewise affected with the disease."

The disease known as wasting palsy is also of the list of affections of the nervous system recognized as transmissible to offspring. A short description of the more salient symptoms of this remarkable affection cannot fail to interest the non-medical members of our Society. We cannot give this better than it is given in the language of Dr. Wm. Roberts, of London, in his "Essay on Wasting Palsy" (1858, and Reynold's "System of Medicine," vol. ii., pp. 166, 169).

He defines it as a "chronic disease, consisting in a progressive atrophy of the voluntary muscles, independent of any antecedent motor or sensory paralysis. Its invasion is gradual, and has usually been in progress some weeks or months before the patient discovers its existence. The first symptom perceived is a certain weakness in the affected member: the tailor finds he cannot hold his needle; the shoemaker cannot

thrust his awl; the mason fails to wield his hammer; the gentleman experiences an awkwardness in handling his pen, in pulling out his pocket-handkerchief, or in putting on his hat. Some such incident calls attention to the affected limb, which is then usually discovered to be more or less wasted and shrunken."

The disease is confined to the spinal cord and nerves, and to the muscles supplied by these diseased nerves. The author just quoted repeatedly speaks of the hereditary tendency to this disease, and mentions ten families in which not only this character of the disease was manifest, but even in hereditary cases, the marked preponderance of the numbers in men. For example, these ten families included twenty-nine persons affected with wasting palsy, of which only four were females. Diseases or habits which depress the vital forces of the parent are regarded as predisposing the offspring to this affection, such as syphilis, gout, infectious fevers, venereal, and alcoholic excesses.

Paralysis agitans, or the shaking palsy, though a disease mostly of advanced age, is often witnessed running through families from generation to generation. This affection, still more than wasting palsy, is a disease very largely predominant in the male, especially if general; its local manifestation is the head and neck of the female, being the almost exclusive form seen in them. This statement, however, cannot be applied to the form of the disease produced by toxic agents, such as the vapor or other forms of mercury, opium, tobacco, alcohol, etc., for the female is not exempt from the effects these substances produce upon the human economy. Whether produced by the use of those agents, or by other causes, no distinction is known to exist as relates to the transmission of this disease to posterity.

Another singular and rather uncommon disease, known among physicians by the name of locomotor ataxy, must be added to the inheritable nervous-system diseases. Without tiring the Society with an enumeration of all the minutiæ of the symptoms attending this affection, I feel that a sketch of its chief features will subserve the interests of the discussion

now occupying it. The patient walks with "a peculiar gait, arising from want of co-ordinating motor power in the lower extremities, a gait precipitate and staggering, the legs starting hither and thither in a very disorderly manner, and the heels coming down with a stamp at each step." These limbs are the seat of more or less neuralgic pains, more or less numbness, tingling, and occasionally convulsive or spasmodic phenomena. (Radcliffe, Reynold's "System of Medicine," vol. ii., p. 348.)

A case presenting such an array of symptoms might, without going further into the examination, be very safely declared to be one of locomotor ataxy.

As relates to the hereditary character of this disease, Dr. Radcliffe, one of the most elaborate essayists upon it, remarks that "what predisposes to other diseases of the nervous system, predisposes to this, family predisposition especially. With regard to family predisposition some curious instances might be given. I know of one case in which one brother of the patient is epileptic, another brother hypochondriac, and two sisters are suffering from different forms of paralysis." It is much to be regretted that this author has not furnished us with a statement of the physical condition of the parents of this miserable family of cripples and invalids. He further quotes Dr. Carre as the historian of "a family in which eighteen members have become ataxic in turn, namely, the grandmother, the mother, eight relations of the latter, seven children, and one cousin." (Reynold's "System of Medicine," vol. ii., p. 350.)

Venereal and vinous excesses are regarded as among the most active causes of the constitutional degeneracy which begets this calamitous inheritance. To these affections of the nervous system may be added, hereditary deafness, hereditary night-blindness, and other affections of the visual organs, and hereditary idiosyncrasies of taste and smell.

As a fitting conclusion to this resumé of the more conspicuous hereditary diseases of the nervous system, we may now speak of that disease known by the name of alcoholism, or chronic alcoholic intoxication. This affection of the nervous

system has attracted much attention during the last quarter of a century. Many essays have been written upon it, much of the best medical talents of the civilized nations has been at work investigating it, and, as a consequence, one of the most remarkable advances in modern medicine has been the establishing of hospitals for the treatment of alcoholism, better known by the name of inebriate asylums. The earlier symptoms of this disease are usually manifest through the motor-nervous system. Of a very large number of cases recorded by Dr. Anstie, "muscular inquietude, which might or might not amount to actual tremor, was the first disagreeable symptom which they noticed." This, he says, amounted in some cases to "no more than an inability to keep the limbs of the body still without a special effort of attention." There are also annoying nocturnal restlessness and inability to sleep, which are supposed, and indeed stated by the patient, to depend on the restless state of the motor system. "Repeatedly," says Dr. Anstie, "I have been assured by persons suffering the slighter degrees of alcoholism, that they go to bed with a sense of at least average drowsiness, but an invincible disposition to turn restlessly from side to side in the bed entirely prevents them from getting any sleep." Dr. Marcet, in his "Essay on Alcoholism," makes the following description of this alcoholic disease of the motor system: "In the daytime the patient is seized with trembling, especially when in the sitting posture; some hardly tremble at all when walking," though in another paragraph he speaks of a peculiar gait that always characterizes these victims, and that there is much awkwardness in the performance of voluntary motion, "even when the body is not subject to a conspicuous trembling; thus, in the act of drinking, the liquid will be spilt from the glass, or a light will be put out instead of being snuffed." This muscular tremor is usually first detected in the hands and upper extremities, though it appears probable that this is so, simply because it is easier to make observations upon the hands than upon the feet, and that disturbances of their muscles would be earlier detected. A peculiarity of this tremor is, that for more or less time after its appearance, the patient can, by an

effort of the will, temporarily restrain the movements of the limbs, but the moment the effort ceases, the tremulousness is renewed with increased vigor. If we have, added to these signs, the fact that this tremulousness is worse in the morning, and that food or wine or ale relieves it, there need be no hesitation in declaring it to be a case of alcoholic tremor, even though the patient deny having used strong drinks, as they sometimes will. Added to this morning tremor, is very often morning sickness of the stomach, and, when present, is an important sign, resulting probably from precedent alcoholic narcosis, in the same manner that the opiates induce sickness as sequelæ of their narcotic action. Now, besides all of these symptoms, and indeed sometimes long before many of them have appeared, certain cerebral or brain symptoms become manifest, such as ringing of the ears and other abnormal sounds; disturbed vision, clouds, specks, and shapeless objects passing before the eyes, and, sooner or later, flashes of light. A dull general headache is usually present, and insomnia and alarming dreams. The next stage of the progress of this degenerative and unquestionably transmissible disease of the nervous system, is well described in the following paragraph of Dr. Anstie's paper:

"The mental condition is now such as to distress the patient and to impress the medical observer. The chief feature is the uncertainty of purpose which the sufferer displays. There is a mental inquietude which makes it impossible for him to settle to any ordinary occupation, or to complete the tasks which he begins. To this may be added, in bad cases, an unfounded dread or delusion as to some enemy, or a nightmarelike sensation of falling, even when walking on firm ground in broad daylight, which latter symptom seems to be connected with a progressive impairment of muscular co-ordination," another name for threatening progressive alcoholic locomotor ataxy. "This sensation," says Dr. Anstie, "as described to me, is not like that of ordinary vertigo, or of fainting, but like that of a disagreeable nightmare, or the hideous feeling which some persons suffer under a large dose of Indian hemp."

If the causes be continued, this train of symptoms gradually,

and more or less promptly, runs into delirium, mania, and hopeless brain-disease, which cannot be treated of in a paper of this title. But should the cause fortunately be removed, should strict abstinence from alcoholic drinks be observed, recovery from this stage of diseased action may confidently be promised in time, but it must not be expected that complete restoration will be suddenly, if ever, realized. Dr. Marcet very truly remarks of this condition, that it "may last for weeks, months, or years, even after the habit of excessive drinking has been given up." It is a subject upon which very grave doubts are entertained by the best instructed in it, whether perfect recovery in fact does take place, whether an organic feebleness is not always left behind, rendering such a brain unnaturally sensitive to alcohol ever after; liable, upon the practice of even the slightest excesses, to experience the most serious symptoms. Such a brain can hardly beget sound ones; on the contrary, there is every possible reason, short of mathematical demonstration, for believing that such brains transmit their acquired feebleness and idiosyncrasy, as respects alcohol and motor-system diseases, to offspring, as was set forth in the quotation from Dr. Turner. I need only refer the Society to the evidence already thrown before it by the initial paper to this discussion, and by the later ones, as to the inherited feebleness of constitution and of will, which prompts the possessor to stimulate, and renders him powerless to resist such promptings. When this evidence shall have been thoroughly digested, I confidently expect that this Society will be ready to decide by a very large vote that there is such a disease as alcoholism; that one of its forms is methomania; that it is an hereditary disease, and of course a transmissible disease; that in all its forms it is a disease requiring treatment, and that its proper treatment holds forth the brightest promises of good; that ignoring its existence promises nothing but hopeless evil to the individual, to the posterity, and to society. Upon the subject of its treatment this Society cannot afford to be without the opinion of one who holds a high position in one of the hospitals for the insane, where numerous methomaniacs are annually treated.

"The most marked event in the past year, 1866 and 1867, was the admission of an unusual number of dipsomaniacs (methomaniacs), of persons whose intemperate use of alcoholic stimulants had, in the judgment of competent medical men, become an insanity, evinced both by the extent of the indulgence and by other more or less prominent morbid mental manifestations. It is because we so often see, in dipsomaniacs, the sacrifice of the extraordinary capacities and opportunities for usefulness to other fellow men, which are afforded by liberal education, wealth, and social influence, that these cases excite our deepest interest. It has now been a quarter of a century since the project of treating inebriates with the view of reforming their habits, in institutions exclusively devoted to their care, began to be talked of by some of the earnest and benevolent minds of the country. No such project was actually undertaken, however, till within the last half-a-dozen years; and the two or three existing establishments of the kind appear to have achieved only a very moderate measure of success in curing inebriety. They have, without doubt, been of considerable service to families in caring for inebriates for short periods, and relieving them from the immediate effects of a debauch. The radical defect in the system of treating this class of persons, now and hitherto pursued, is the absence of a *legal coercive detention*, and an absolute abstinence from drink for a sufficient length of time to restore the impaired moral and intellectual powers, and to effect those physiological changes which are believed to attend the loss of the morbid, and the restoration of the natural appetite. The detention not having been legally coercive in such institutions, it has generally been of short duration, and not been even attended with abstinence from liquor while it lasted. In relation to the treatment of confirmed inebriates, we believe the desideratum at this time is a public judgment distinctly expressed in the State constitutions and laws, and expounded and enforced by the courts, that they are dangerous to themselves and to others, and may and should be legally subjected to prolonged restraint, both for the protection of society and for their own protection and reformation.

The discipline of an inebriate hospital should be coercive, and so understood; but, as its inmates are not convicts, however culpable they may be in the eye of the moral law, the coercion may, and should be, disguised in every way that does not impair its essential efficiency.

"Time will probably show that it is the practical error of the system at present adopted, that it is too voluntary—a fault not wholly of the managers, but due to the want of a more efficient system of reformatory restraint, authorized by laws that have hitherto been enacted by one State only, and which even in that State have, by one of its courts, been decided to be unconstitutional. The reports of the institutions for the insane, both of this country and of Europe, show that intemperance is a common cause of insanity in its ordinary forms. Authorities almost unanimously agree that inebriety sometimes becomes an insanity—a settled mental alienation, arising from a morbid condition of the brain and nervous system, and characterized by a total abandonment to extreme indulgence, regardless of the most sacred claims and pledges, and by more or less impairment of the moral and intellectual powers of the individual. Inebriety as a concomitant, if not the cause of insanity, should be treated in an institution for the insane. Such is the increasing practice in American institutions, and it accords with the proposition adopted by the Association of Medical Superintendents of American Institutions for the Insane, in 1866. What we have said in relation to the continuance of the detention, and to the certain and entire abstinence of the inmates of an inebriate institution, applies equally to the treatment of dipsomaniacs in any institution for the insane; and it is upon these two points, so essential to the success of any effort to reclaim inebriates or cure dipsomaniacs, that the public needs to be better instructed, and the most prevalent doctrines of the courts reformed. In a few weeks—sometimes in a few days—after the dipsomaniac is placed under restraint and proper treatment, the immediate effects of drinking pass off, and to a casual observer, he appears to be entirely sane; and, if a court of competent jurisdiction can then be reached, a writ of

habeas corpus will probably set the person at liberty. He is not yet sane, however. His moral and intellectual powers are weak and deeply perverted; his nervous system is irritable and depressed; every fibre of his being seems to demand stimulants, and his thirst for them is intense; and the moment he is discharged, he resorts to their use with the unreasoning directness with which the brutes obey their instincts. In permitting him to renew his self-destruction—a self-destruction that carries so much misery along with it—society rejects the guidance of science, fails to discharge its obligations to the individual and to itself, and reaps a harvest of ills which, in their severity and extent, are second to none that afflict humanity. We know of no more distressing embarrassment than that which the families of inebriates often experience, who find themselves the anxious but passive victims of a terribly destructive evil which they have no power either to avert or remedy. The question may be asked whether restraint, prolonged for a year or two, will cure dipsomania? The answer of science is, we believe, that this form of insanity appears in this respect to follow the law of other forms of mental disease. It should be remembered that the cure is not undertaken in dipsomania till the disease has become chronic and deeply seated; but, if there be no constitutional tendency to this or any other form of insanity, and the treatment be continued till the susceptibilities and strength, both of the body and the mind, become entirely normal, the cure is likely to prove permanent."* We have italicized some parts of this quotation, to mark what appear to us as its strongest and most important points. For example, *coercive detention* is indispensable, for some months, at least, if we think of effecting a curative result. Such a result depends entirely upon the activity of the restorative powers of the injured brain during a more or less prolonged abstinence from the use of alcohol. The evidence of restoration, as this author very forcibly states, is found in the loss of the morbid, and the

* Report of the Government Hospital for the Insane, for 1866 and 1867. By Dr. Nichols, Superintendent.

restoration of the *natural appetite*. As this result, therefore, is subject to such variable contingencies, a fixed time for the restorative detention of the methomaniac cannot be established. It may, however, be stated as the result of experience, that few are permanently restored with an abstinence of less duration than one year. And as to the methomaniac's liability to endanger his own life, as well as the lives of those about him, the long list of suicides and homicides furnishes the most conclusive evidence.

We are glad to see that the public are becoming "*better instructed*" in this matter of the proper management of methomaniacs, as indicated by the recent enactment of the Illinois Legislature, providing that, in that State, they shall be treated as insane persons, and that their property shall be put in charge of trustees. We have not seen a copy of that law, but we trust that it will be able to sustain itself against the *habeas corpus* privilege, so far as to maintain a coercive detention of the person long enough to effect a restoration of body and brain, which will enable the victim to voluntarily resist his morbid promptings to the use of intoxicating agents, whether alcohol, opium, or others. Unless it do, the good it was intended to accomplish will be vastly diminished, and the interests of society, and of individuals, including the victims of methomania themselves, will be sacrificed by the very power and privilege which was intended to secure them.

LAWS RELATING

TO

INEBRIATE ASYLUMS

AND

HABITUAL DRUNKARDS.*

By WILLIAM SHRADY, A.M., LL.B.

AN ACT

To Establish an Asylum for Inebriates in the City of New York. Passed April 8, 1864.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Commissioners of Public Charities and Correction are hereby authorized and empowered to erect, establish, and furnish, upon the land belonging to the city of New York, now under the control of said commissioners, a building or buildings to be known as the Asylum for Inebriates, and to build and construct all such appurtenances thereto as in the judgment of said commissioners may be necessary and proper. The said commissioners are also authorized and empowered to appoint and employ all such physicians, surgeons, officers, and attendants as may be necessary and proper for the management and direction of said asylum, and the care of the inmates thereof, and to fix the compensation of such employees in the same manner and with the same power as in respect to

* Read before the Medico-Legal Society, New York, March 25, 1869.

the persons employed in the institution heretofore placed under the control of said commissioners.

SEC. 2. The necessary expenses of erecting and constructing such asylum and its appurtenances, and of maintaining the same, shall be provided for in the same manner as the expenses of the other institutions heretofore placed under the control of the said commissioners, and said commissioners are hereby authorized and directed to apply to the support of said asylum all the proceeds of the tax or excise upon intoxicating liquors which shall be received by them, except the ten per cent. heretofore directed to be paid to the managers of the State Inebriate Asylum at Binghamton.

SEC. 3. The said commissioners shall make all needful rules and regulations for the government of said asylum, and shall provide for the proper support and maintenance of the inmates thereof, and especially for such medical treatment as will be effectual for, or tend to, the curing of such inmates of the habits of inebriety and diseases induced thereby, and they shall have full power and authority to regulate and control the inmates of said asylum, and to establish such provisions for moral and sanitary discipline as they may deem expedient.

SEC. 4. The justices of the Supreme Court, in the exercise of their jurisdiction within the city of New York, the justices of the Superior Court of said city, and the judges of the Court of Common Pleas in and for the county of New York, shall have power to commit to the said inebriate asylum, for a term not to exceed two years, all persons who, being actual inhabitants of the said city, shall be incapable or unfit for properly conducting their own affairs, in consequence of habitual drunkenness.

SEC. 5. Such commitment shall be made by any of said justices or judges in any case where the facts referred to in the last preceding section of this act shall be made to appear by petition or complaint, duly verified and presented by any relative of such habitual drunkard, or by the Commissioners of Public Charities and Correction, or any officer of the metropolitan police doing duty within said city, and upon return of a commission issued upon such petition or complaint.

SEC. 6. Upon the presentation of such petition or complaint, the justice or judge to whom the same shall be presented shall proceed thereupon in the same manner as is directed in title two of chapter five of part two of the Revised Statutes of the State of New York, in relation to the care and custody of the persons and estates of idiots, lunatics, persons of unsound mind, and drunkards, and according to the rules and practice of the Supreme Court in such cases.

SEC. 7. Upon becoming satisfied by return of a commission as heretofore provided, that any person is an habitual drunkard, and incapable, in consequence thereof, of conducting his or her own affairs, said justice or judge shall have power, in his discretion, to issue his warrant committing the person so found to be an habitual drunkard to the custody of the said Commissioners of Public Charities and Correction, to be detained in the said asylum for such period, not exceeding two years, as the said justice or judge may deem proper, and such warrant shall be executed by any member of the metropolitan police, upon the request of said commissioners or one of them. Any such warrant duly issued shall be full and sufficient justification for all acts done by any properly authorized officer, under and in accordance therewith.

SEC. 8. Any justice or judge before whom proceedings may be pending under the provisions of this act may, after filing of any complaint, and when in his judgment the circumstances of the case render it proper so to do, commit the person charged with being an habitual drunkard to the said asylum, if, on return of a commission, it shall be determined that they are not proper persons to be detained.

SEC. 9. The estate of any person committed to such asylum, and the person committed, shall be liable for the support of such person therein, and the committee of every such person shall pay out of his estate such reasonable and proper sum as shall be fixed by the justice or judge ordering the commitment. The said Commissioners of Public Charities and Correction shall have authority to bring and maintain actions in any court of competent jurisdiction, against the committee or guardians of the estate of any person committed to said asy-

lum as aforesaid, or against any person so committed, for the support and maintenance of such person while in said asylum. Such actions may be brought by said commissioners in the name of the "Board of Commissioners of Public Charities and Correction," but all recoveries had in such actions shall inure to the city of New York, and all amounts collected thereon shall be received by said commissioners and accounted for in the same manner as all other moneys which they are by law authorized to receive.

SEC. 10. It shall be lawful for the said Commissioners of Charities and Correction to transfer from the almshouse and workhouse under their control, to said inebriate asylum, any persons committed to the almshouse or workhouse, who, in the judgment of said commissioners, shall be fit and proper subjects for the said asylum, and in their discretion to return such persons to the almshouse or workhouse; provided, however, that no person shall by reason of such transfer be restrained of his liberty for a longer term than required by his original sentence or commitment.

SEC. 11. Any person committed to the said asylum, by order of any justice or judge as heretofore provided, may be discharged therefrom at any time before the expiration of the time for which such person was committed, upon the order of any justice or judge having jurisdiction as herein provided, upon such justice or judge being satisfied that such person is cured and fit to be released. Application for such discharge may be made by any person, provided, however, that previous notice of such application shall be given in writing to the said Commissioners of Public Charities and Correction. Upon any such application being made, the justice or judge receiving the same, shall proceed in the same manner as upon writs of habeas corpus.

SEC. 12. The said commissioners shall have authority at any time to discharge from said asylum any person committed thereto, for the following causes, viz.:

First. That such person is cured.

Second. That such person is incurable, and incapable of

being permanently benefited by the treatment and discipline of said asylum.

Third. That such person has failed to pay for his support therein, or has been guilty of vicious conduct prejudicial to the good order and discipline of the institution.

This act shall take effect immediately.

AN ACT

To Amend an Act entitled "An Act to establish an Asylum for Inebriates in the city of New York, and provide for the Government thereof. Passed April 20, 1867.—(Chapter 470. *Laws*, 1867, vol. i.)

Section 1. Section second of the act entitled "An Act to Establish an Asylum for Inebriates in the city of New York, and Provide for the Government thereof," passed April 8, 1864, is hereby amended, so to read as follows: "The necessary expense of erecting and constructing such asylum and its appurtenances, and of maintaining the same, shall be provided for in the same manner as the expenses of the other institutions heretofore placed under the control of the said commissioners, and said commissioners are hereby authorized to receive from the Board of Excise, from time to time, twelve per cent. of the aggregate amount of moneys received in each and every year by said Board of Excise, from and after April first, eighteen hundred and sixty-seven, for license fees received for licenses granted in the city and county of New York, and said board upon application of the said commissioners, are hereby authorized and directed to pay over, from time to time, to said commissioners such per centage, which moneys shall be strictly applied by said commissioners to the building, maintenance, and support of said asylum, and duly accounted for in their annual report. But nothing in this act contained shall be construed to divert from the State Inebriate Asylum, or interfere with the proportion of said license fees set apart for said institution by existing laws. The commis-

sioners are authorized to demand and receive all fines imposed by intoxication or disorderly conduct in the city of New York, which fines, without any deduction, shall be paid over monthly by the magistrate, clerk, or other person who receives the same, to the said commissioners, and shall be by them applied and accounted for as other moneys received by virtue of this act."

AN ACT

To Incorporate the Inebriates' Home for Kings County. Passed May 9, 1867.—(Chap. 843, *Laws of* 1867, vol. ii.)

Section 1. George Hall, John Dikeman, Samuel D. Morris, John M. Hicks, John McNamee, Abraham Beal, John Marsh, James H. Prentice, George I. Bennett, William I. Allen, and their associates are hereby created a body corporate, by the name of the Inebriates' Home for Kings county. The corporation hereby created shall have all the powers, and be subject to all the restrictions conferred and provided by the act entitled "An Act for the Incorporation of Benevolent, Charitable, Scientific, and Missionary Societies," passed April 12, 1848, and the several acts amendatory thereof, except so far as the same are modified by this act.

Sec. 2. The said corporation shall have power to receive and retain all inebriates who enter said home, either voluntarily or by order of the trustees, as hereinafter provided, for such period as said trustees may deem for the benefit of such inebriates, not exceeding six months.

Sec. 3. It shall have power to establish and carry on such branches of industry as the trustees thereof may deem necessary to carry out the reformatory objects for which it is established, and may take, purchase, hold, and dispose of such personal property as may be necessary for that purpose and no other. In its corporate name, to take, purchase, and hold real estate in the county of Kings, and erect thereon such building or buildings as the said trustees may deem proper and necessary to carry out the objects of said incorporation

and for no other object. Said corporation shall have power to sue and be sued, to make and use a common seal, and alter the same at pleasure; to take and hold any grant or devise of lands, or any donation or bequest of money or other personal property to be applied to the founding and maintenance of said institution.

SEC. 4. The treasurer of the Board of Excise, in and for the metropolitan police district of the State of New York, shall pay to the treasurer of the said Inebriates' Home of Kings county, or his order, twelve per cent. of all the moneys hereafter received by said Board of Excise for licenses granted under said excise law to persons residing in the county of Kings, after all legal deductions therefrom, and deducting therefrom the proper proportion of the expenses of said board, and such sums as now or may hereafter be appropriated by law to other purposes. And all fines hereafter received by said board for violations of said excise law, committed in said county of Kings, shall in like manner be paid to the treasurer of said Inebriates' Home of Kings County. The money herein directed to the treasurer of said Inebriates' Home shall be so paid by the treasurer of said Excise Board, within thirty days after the receipt thereof by such board; which money shall be applied to the founding and maintenance of such Inebriates' Home, and for no other purpose.

SEC. 5. The said trustees shall have power to visit the persons confined in the jail or penitentiary of Kings County, for intoxication or habitual drunkenness, as often and at such times as they may deem advisable; and may determine from time to time who of the persons so confined in said institutions are fit and proper subjects to be transferred to said "Inebriates' Home." Whenever said trustees shall determine, pursuant to their by-laws, that any such person is a fit and proper subject to be so transferred, the president of said "Inebriates' Home" shall make out and sign a certificate stating the fact that said trustees have determined that such person is a fit and proper person to be so transferred, and directing the keeper of said jail or penitentiary to deliver such person to the keeper of

said home, which certificate shall be filed with such keeper. Upon receiving such certificate, the keeper shall forthwith transfer such person to said home, there to be detained pursuant to the first section of this act.

SEC. 6. For the purpose of carrying out the object of said "Inebriates' Home," the magistrates in Kings County shall hereafter commit persons convicted for intoxication, or as habitual drunkards, to the jail or penitentiary for a period not exceeding six months; in case of the commitment of such persons, and the persons so committed for intoxication, unless transferred as hereinbefore provided, shall be discharged by the keeper of the jail or penitentiary, at the expiration of ten days from their commitment; and the persons so committed as habitual drunkards, unless so transferred, shall be so discharged at the expiration of thirty days from their commitment.

SEC. 7. All inebriates confined in said home shall be allowed a reasonable compensation for all services they may render while so confined.

SEC. 8. This act shall take effect immediately.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE INEBRIATES' HOME FOR KINGS COUNTY," passed May 9, 1867. Passed April 30, 1868.—(*Laws*, 1868, vol. ii.)

SEC. 1 relates to the amending of section 4.

SEC. 4 is hereby amended so as to read as follows: The Treasurer of the Board of Excise, in and for the Metropolitan Police District of the State of New York, shall pay to the (said) treasurer of the said "Inebriates' Home," the sum of $200,000 of the first moneys hereafter received by said Board of Excise, for licenses granted under said excise law to persons carrying on business in the county of Kings, which amount is hereby appropriated to said "Home," to be applied to the erection and furnishing of suitable buildings for the same, and improving the grounds belonging thereto, and no other purpose. After the payment to said "Home" of the

said sum of $200,000 the treasurer of said Board of Excise shall pay annually thereafter to the treasurer of said "Home" the sum of $10,000, out of the excise money as aforesaid, to be applied to the maintenance of the same, and for no other purpose. All fines hereafter collected for violations of said excise law, in the county of Kings shall be paid to the treasurer of said "Home" in the manner hereinafter stated. The justices of the peace of the city of Brooklyn, and police justices and justices in the towns in Kings County are hereby required to pay to the treasurer of said "Home" quarter-yearly, all moneys received by them for violations of any of the provisions of this act. Such payment shall be accompanied by a detailed statement, showing the separate amounts received by them, from whom received, the date when received, and the residence of the party so far as the same can be ascertained by his examination, and that of the officer making the arrest, which statement shall be verified by the oath of the justice. Any person failing to comply with the provisions of this act, shall be guilty of a misdemeanor.

SEC. 2. Section seven of said act is hereby repealed.

SEC. 3. Section three of said act is hereby amended by adding thereto as follows: The justices of the Supreme Court in the exercise of their jurisdiction within the county of Kings, shall have power to commit to said "Inebriate Home" for a term not to exceed one year, all persons who, being actual inhabitants of the said county, shall be incapable or unfit for properly conducting their own affairs, in consequence of habitual drunkenness.

SEC. 4. Such commitment shall be made by any of said justices in any case where the facts referred to in the last preceding section of this act shall be made to appear by petition or complaint duly verified and presented by any relative of such habitual drunkard, or by any officer of said "Home," or any officer of the Metropolitan Police doing duty within said county, and upon return of a commission issued upon such petition or complaint.

SEC. 5. Upon the presentation of such petition or complaint, the justice to whom the same shall be presented, shall proceed

thereupon in the same manner as is directed in title 2 of chap. 5 of part 2 of the Revised Statutes of the State of New York in relation to the care and custody of the persons and estates of idiots, lunatics, persons of unsound mind and drunkards, and according to the rules and practice of the Supreme Court in such cases.

SEC. 6. Upon becoming satisfied by return of a commission, as heretofore provided, that any person is an habitual drunkard, and incapable in consequence thereof, of conducting his or her own affairs, said justice shall have power, in his discretion, to issue his warrant committing the person so found to be an habitual drunkard, to the custody of the said "Home," to be detained in the said "Home" for such period not exceeding one year, as the said justice may deem proper, and such warrant shall be executed by any member of the Metropolitan Police. Any such warrant, duly issued, shall be full and sufficient justification for all acts done by any properly authorized officer, under and in accordance therewith. Such order of commitment may at any time be vacated or modified by any justice of the Supreme Court, on cause shown.

SEC. 7. Any justice before whom proceedings may be pending, under the provisions of this act, may after filing of any complaint, and when in his judgment the circumstances of the case render it proper to do so, commit the person charged with being an habitual drunkard to the said "Home" while proceedings on such complaint are pending, and all persons so temporarily committed shall be discharged from said "Home" if on return of a commission, it shall be determined that they are not proper persons to be detained.

SEC. 8. The estate of any person committed to such "Home," and the person committed, shall be liable for the support of such person therein, and the committee of every such person shall pay out of his estate such reasonable and proper sum as shall be fixed by the justice ordering the commitment.

SEC. 9. In the erection of the buildings provided for in the first section of this act, suitable and proper provisions shall be made for keeping those who may enter said "Home" voluntarily separate and apart from those who may be transferred

to said "Home" from the jail or penitentiary. Suitable provision shall also be made for keeping the sexes separate and apart. There shall be provided, also, a suitable chapel for religious services, which shall be equally free to all religious denominations.

SEC. 10. The money appropriated by the first section of this act to be applied to the erection and furnishing of suitable buildings for said "Home," and improving the grounds belonging thereto, shall not be expended unless sanctioned by the Mayor and City Judge of the city of Brooklyn, and the County Judge of the county of Kings, in conjunction with the Executive Committee of said "Home," who shall approve of all plans, specifications, and contracts relating to the erection and furnishing said buildings and improving said grounds. And the officers herein named, are hereby declared to be members and trustees of said corporation by virtue of their offices, and invested with all the powers of the original incorporators.

SEC. 11. The president of said "Home" shall in the month of January, in each year, report to the Legislature the doings of said "Home" for the preceding year, which report shall state the amount of money received and on hand, the sources from whence received, the amount expended, the number received into and discharged therefrom, together with such other information as may be deemed of general interest.

SEC. 12. James S. T. Stranahan is hereby made one of the incorporators and trustees of the said Inebriates' Home in the place of George Hall deceased.

SEC. 13. This act shall take effect immediately.

AN ACT

FOR THE RELIEF OF THE NEW YORK STATE INEBRIATE ASYLUM.
Passed April 15, 1859.—(Chap. 381, p. 902.)

SECTION 1. The treasurer of each and every county of this State shall pay to the treasurer of the New York State Inebri-

ate Asylum, or his order, on the first Monday of July of each year, ten per cent. of all the moneys received by said county treasurer from the Board of Commissioners of Excise in and for said county.

SEC. 2. The land situated in Binghamton, in the county of Broome, selected by the trustees of said asylum for the site thereof, and the acts of the trustees in selecting and fixing said site are hereby confirmed.

SEC. 3. The trustees of said asylum shall expend the said moneys in completing the asylum building commenced on said land, and such other buildings and improvements as shall be required for the comfort and convenience of the patients.

SEC. 4. The treasurer of said asylum shall not receive any of said moneys until after he shall have given a bond, with at least two sufficient sureties, to the New York State Inebriate Asylum, in such penalty and upon such condition as the board of trustees, at a monthly meeting thereof, shall fix by resolution, and the sufficiency of such sureties shall be approved of by the president or vice-president of said board.

SEC. 5. Reuben H. Walworth, John W. Francis, William T. McCoun, James Boorman, James S. Wadsworth, Daniel S. Dickinson, Washington Hunt, Charles H. Ruggles, Charles Cook, Josiah B. Williams, Hamilton Murray, Edward A. Lambert, William E. Dodge, Jonathan H. Ransom, Jacob S. Miller, Thomas C. Brinsmade, Thomas W. Olcott, Jacob F. Rathbone, Ransom Balcom, Sherman D. Phelps, Vincent Whitney, Allan Munroe, H. P. Alexander, Joseph Mullen, C. P. Wood, Noah Worrall, Franklin Johnson, George Folsom, Charles Butler, Lorenzo Draper, Edward F. Shonnard, Gerrit Smith, John Conklin, Frederick Juliand, Tracy Beadle, Peter S. Danforth, George W. Tifft, Henry A. Brewster, Charles Doolittle, and I. Edward Turner, shall constitute the Board of Trustees of this institution. Any vacancy that may hereafter occur in the Board of Trustees of said institution shall be filled by the remaining trustees, at any meeting duly called for that purpose.

SEC. 6. The Senate, upon recommendation of the governor, for cause to be specified, may remove any trustee of said asylum.

SEC. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 8. This act shall take effect immediately.

AN ACT

FOR THE RELIEF OF THE NEW YORK STATE INEBRIATE ASYLUM.

Passed March 21, 1861.—(Chapter 65, page 120.)

SECTION 1. The trustees of the New York State Inebriate Asylum shall have power to issue bonds to the amount of sixty thousand dollars. The payment of said bonds shall be secured by a pledge of all the lands and buildings belonging to said New York State Inebriate Asylum. The said bonds shall be issued for the period of ten years, and said bonds shall draw seven per cent. interest, payable semi-annually in the city of New York. Each bond shall be signed by the president, or vice-president, and treasurer of said asylum. No bond shall be issued for a less sum than one hundred dollars, or for a greater sum than five thousand dollars. No bond shall be sold by the said asylum for less than par value. All moneys which shall arise from the sale of said bonds, shall be expended in the building of said asylum.

SEC. 2. If the said inebriate asylum shall fail to pay the interest on said bonds semi-annually, or neglect to pay the said bonds at maturity, then any owner or owners of said bonds may, by action in the Supreme Court, foreclose the same in the same manner as in the case of foreclosures of mortgages upon real estate, by the sale of said lands and buildings.

SEC. 3. Duplicates of all bonds issued in pursuance of the foregoing section, shall be filed with the clerk of the county in which said asylum is located, and when thus filed shall be a mortgage lien upon the corporate property of said asylum. No bond owner shall have any priority over any other bond owner, but shall share alike in all the property of said asy-

lum, provided the said asylum shall fail to pay interest on said bonds or principal when due.

SEC. 4. The election of the trustees of the New York State Inebriate Asylum shall be held on the first Wednesday in June of each year, at the office of the institution at ten o'clock A.M. The said trustees shall be elected by ballot, by plurality of subscribers present, or represented by proxy, each and every subscription of ten dollars paid one vote. Three fit and disinterested persons shall be appointed by the Board of Trustees, three weeks previous to each election of trustees of said asylum, inspectors of the next election. The said Board of Trustees annually, from their own body, shall elect by ballot a president and treasurer of said asylum, on the first Wednesday of June in each year, at eleven o'clock A.M. The annual meeting of the Board of Trustees of said asylum shall be held on the first Wednesday of June in each year, at the office of the institution, at eleven o'clock A.M.

SEC. 5. Any person who shall donate, or leave by legacy, the sum of five thousand dollars to the New York State Inebriate Asylum, shall establish forever a free bed in said asylum. Two thousand five hundred dollars shall provide a free bed in said asylum for six months in each year. Twelve hundred and fifty dollars shall provide a free bed in said asylum for three months in each year. The donor or legator shall name the patient who shall occupy the said free bed, but in case the donor or legator shall fail to name a patient to occupy the free bed which said donor or legator shall have endowed, then the trustees of said asylum shall fill the said free bed with a poor patient. The said patients in said free beds shall be provided with medical treatment and board free of charge, and said patients shall be subject to the rules and regulations of said asylum.

SEC. 6. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 7. This act shall take effect immediately.

AN ACT

FOR THE BETTER REGULATION AND DISCIPLINE OF THE NEW YORK STATE INEBRIATE ASYLUM. Passed April 15, 1864.—(*Laws of* 1864, chapter 196.)

SECTION 1. No person shall sell any strong or spirituous liquors, or wines or fermented liquors, within the distance of one half mile from the outward bounds of the lands and premises of the New York State Inebriate Asylum, situate in the towns of Binghamton and Kirkwood in Broome County.

SEC. 2. Whoever shall sell any strong or spirituous liquors or wines or fermented liquors, within the distance of one half mile from the outward bounds of the said lands and premises, shall forfeit fifty dollars for each offence, and shall also be guilty of a misdemeanor.

SEC. 3. No person shall enter in any manner, or pass upon the said lands and premises of the New York State Inebriate Asylum, other than the officers of said asylum, officers of justice, and those having business with said asylum, without a written or printed permit or pass, to be issued by the officer or officers of said asylum, designated in conformity with such by-laws as said asylum may pass; and any person violating the provisions of this section shall forfeit the sum of ten dollars, and shall be guilty of a misdemeanor.

SEC. 4. All penalties imposed by this act shall be sued for and recovered in the name of the president of the New York State Inebriate Asylum, and shall be paid to the treasurer of the county of Broome, for the support of the poor of said county.

SEC. 5. Any justice of the Supreme Court, or the County Judge of the county in which any inebriate may reside, shall have power to commit such inebriate to the New York State Inebriate Asylum, upon the production and filing of an affidavit or affidavits by two respectable practicing physicians and two respectable citizens, freeholders of such county, to the effect that such inebriate is lost to self-control, unable from such inebriation to attend to business, or dangerous to

remain at large. But such commitment shall be only until the examination now provided by law, shall have been held, and in no case for a longer period than three months.

Sec. 6. This act shall take effect immediately.

AN ACT

For the Better Regulation and Discipline of the New York State Inebriate Asylum. Passed March 31, 1865.—(Chap. 266. *Laws of* 1865.)

Section 1. No person shall sell or give away any strong or spirituous liquors or wines, or fermented liquors, or opium, or tobacco to any patient belonging to the New York State Inebriate Asylum.

Sec. 2. Whoever shall sell or give away any strong or spirituous liquors, or wines, or fermented liquors, or opium, or tobacco to any patient belonging to the New York State Inebriate Asylum, shall forfeit fifty dollars for each offence, and shall also be guilty of a misdemeanor.

Sec. 3. All penalties imposed by this act shall be sued for and recovered in the name of the president of the New York State Inebriate Asylum, and shall be paid into the State treasury.

Sec. 4. Any justice of the Supreme Court, or the County Judge of the county in which any inebriate may reside, shall have power to commit such inebriate to the New York State Inebriate Asylum upon the production and filing of an affidavit or affidavits by two respectable practicing physicians and two respectable citizens, freeholders of such county, to the effect that such inebriate is lost to self-control, unable, from such inebriation, to attend to business, or is thereby dangerous to remain at large. But such commitment shall be only until the examination now provided by law shall have been held, and in no case for a longer period than one year.

Sec. 5. This act shall take effect immediately.

OF THE CARE OF HABITUAL DRUNKARDS.

SEC. 1. Whenever the overseers of the poor of any city or town shall discover any person to be an habitual drunkard, they may by writing under their hands designate and describe such drunkard, and by written notice signed by them, require every merchant, distiller, shop-keeper, grocer, tavern-keeper or other dealer in spirituous liquors, and every other person residing within the city or town where such drunkard shall reside, or in any other city or town near to or adjoining such city or town, not to give or sell under any pretence, any spirituous liquors to such drunkard.

SEC. 2. If, after the personal service of such notice, any such person shall knowingly give or sell in any manner whatever, spirituous liquors to any such drunkard, except by the personal direction or on the written certificate of some physician, regularly licensed to practice, according to the laws of this State, stating that such liquor is necessary for the preservation or recovery of the health of such drunkard, he shall forfeit for every offence the sum of ten dollars, for the use of the poor of the town where such drunkard resides.

SEC. 3. Any person so designated by the overseers of the poor as an habitual drunkard, may apply to any justice of the peace of the city or town in which the person so designated resides, for process to summon a jury to try and determine such fact of drunkenness.

SEC. 4. On such application, the justice shall immediately give notice thereof in writing to the overseers of the poor, specifying the time and place where the parties shall meet for the trial of such fact, and shall issue a venire to any constable to summon a jury of twelve persons, competent to serve on juries, to appear at the said time and place for the purpose of trying the said fact.

SEC. 5. Such jury shall be summoned, returned, and six of them shall be balloted for by such justice, and shall be sworn well and truly to try the fact of the alleged drunkenness, in the same manner as for the trial of issues in suits brought before a justice of the peace; and witnesses shall be sum-

moned, and their attendance and testimony enforced, and they shall be sworn and examined before the said jury in like manner.

SEC. 6. The said jury shall hear the allegations and proofs offered on both sides, and shall proceed in all respects as in trials at law, to render their verdict; which verdict shall be entered by such justice in a book provided by him for the purpose.

SEC. 7. The said verdict, or an attested copy thereof under the hand of such justice, shall be received and deemed to be presumptive evidence of the fact thereby found, in any action between the overseers of the poor and any person prosecuted by them for the penalty hereinbefore imposed.

SEC. 8. If by the verdict of the jury it shall be found that the person demanding such trial is an habitual drunkard, the justice shall enter judgment against such person, and award execution for the costs of the overseers of the poor in attending such trial, in the same manner as in suits between individuals, which justices of the peace are authorized to try and determine.

SEC. 9. If it be found that such person is not an habitual drunkard, such justice shall in like manner enter judgment and award execution for the costs of such person against the said overseers, unless it shall appear to such justice that the said overseers acted in good faith, and had reasonable cause to believe such person an habitual drunkard; in which case no costs shall be awarded against them.

SEC. 10. The accounts of the overseers of the poor for the expense of defending against any such application shall be audited and allowed in the same manner as the other expenses of such city or town.

SEC. 11. If at any time the overseers of the poor shall be satisfied that such drunkard has reformed and become temperate, they may revoke and annul any such notice given by them or any of their predecessors in office.

SEC. 12. Every person upon whom the notice mentioned in section first, title four, chapter twenty, first part of the Revised Statutes has been served, shall be liable to the forfeiture

prescribed in the second section of the same title, whenever any clerk, agent, or member of the family of such person shall knowingly give or sell in any manner whatever spirituous liquors to any person designated as an habitual drunkard in the manner mentioned in said first section; except by the personal direction, or on the written certificate of some physician, stating that such liquor is necessary for the preservation or recovery of the health of such drunkard, as prescribed in such section (1840, chap. 229, sec. 1).

Sec. 13. Where the parents or guardian of a minor under sixteen years of age, or the master of an apprentice or servant, have been designated by the overseers of the poor as habitual drunkards, no tavern-keeper, grocer, or other person licensed to sell any strong or spirituous liquors or wines, shall sell any such liquors or wines to any such minor, or apprentice, or servant, without the consent of the overseers of the poor of the city or town where such minor or apprentice or servant shall reside, and whoever shall offend against the provisions of this section, shall forfeit the penalty prescribed by section seventeen of title nine of chapter twenty of the first part of the Revised Statutes, to be recovered by such overseers of the poor (1840, chap. 229, sec. 2). Whoever shall sell any strong or spirituous liquors, or any wines in any quantity less than five gallons at a time, without having a license therefor granted as herein directed, shall forfeit twenty-five dollars.

Sec. 14. Whenever the overseers of the poor of any city or town shall discover any person to be an habitual drunkard, they shall by writing, under their hands, designate and describe such drunkard, and perform all the services and duties mentioned and specified in section first of title four of chapter twenty of the first part of the Revised Statutes.

Inquisitions of lunacy and of habitual drunkenness are analogous to a proceeding in rem. They are public and notorious, and are conclusively presumed to be known to those who subsequently deal with the subjects of them. Accordingly, where the indorser of a bill of exchange, who had, prior to its maturity, been found an habitual drunkard, by a written instrument made after such finding, and before the appoint-

ment of a committee, and while sober waived notice of protest, in consequence of which the holder omitted to have notice served, Held that the waiver was void.

Sales of lands.—The court has no power to order a sale of the drunkard's real estate, unless necessary to raise funds for the support of himself and family.

All gifts and contracts made by an idiot, lunatic, or habitual drunkard, after the actual finding of an inquisition, are utterly void (4 Coke, 126, book 127; 4 Mass., 147; Chancery, 1831; L'Amoureux *v.* Crosby, 2 Paige, 422).

After one has, by inquisition, been found an habitual drunkard, the trust of the committee continues without interruption, until it is vacated or superseded. The drunkard cannot, even in his sober intervals, make contracts to bind himself or his property (2 Paige, 427; 14 Pickering, 283; Court of Appeals, 1853; Wadsworth *v.* Sharpsteen, 8 N. Y.; 4 Selden, 388).

Majority.—In relation to every legal question arising in the execution of the commission, a majority of the commissioners must decide.

Foreclosure.—The committee of an habitual drunkard who holds a mortgage against the estate, cannot, without the sanction of the court, enforce it by proceedings of foreclosure under the statute (Chancery, 1832; Matter of Carter, 3 Paige, 146).

Accounting.—If the committee of an habitual drunkard neglect to file an inventory or account regularly, in the settlement of his accounts, every presumption will be taken most strongly against him.

Interference by Strangers.—Where a person has wilfully harbored the drunkard against the wishes of the committee, the proper course is to serve an *ex parte* order upon such person to deliver him up to the committee, or to cease from harboring him, and from interference with the committee (Chancery, 1835, Matter of Lynch, 5 Paige, 120).

Superseding.—The court will not discharge the committee of an habitual drunkard and restore his estate to him, upon mere proof that he is capable at present of managing his affairs. There must be a permanent reformation; and in general at least one year's voluntary and total abstinence from intoxicating liquors must be shown (Chancery, 1838, Matter of Hoag, 7 Paige, 312).

Dealing with the Drunkard.—One having actual notice of pending proceedings on a commission of inquiry against an habitual drunkard, purchased real property of him. Held, a fraud upon the court, and that the conveyance should be set aside (Supreme Court, 1851, Griswold *v.* Miller, 15 Barb., 520).

Suit against Committee.—A creditor of an habitual drunkard cannot bring an ordinary action against his committee, to recover a debt or demand against the drunkard. The proceeding by petition, as formerly in a court of equity, is the proper course, unless it is shown that a trial is necessary to settle some disputed question or right; in which case an order upon cause shown should be obtained, authorizing the bringing of an action in the nature of a suit in equity (Supreme Court, Sp. T., 1853, Hall *v.* Taylor, 8 How. Prac., 428).

Selling Liquor.—If any person is furnishing an habitual drunkard with means of intoxication, the committee should apply to the court for an order restraining all persons from furnishing the drunkard with ardent spirits or the means of obtaining it, without the sanction of the committee; and a violation of the order, after notice, will be punished as a contempt (Chancery, 1832, Matter of Heller, 3 Paige, 199; 1838, Matter of Hoag, 7 Id., 312).

On violation of such order, the committee should proceed for the contempt (Chan., 1838, Matter of Hoag, 7 Paige, 312).

What Court to proceed. Proceedings instituted in the Court of Chancery for the appointment of a committee of the persons and estates of an habitual drunkard, and pending at the

time the constitution of 1846 went into effect, by force of that constitution became vested in the Supreme Court, and not in the County Court (Supreme Court, 1865, Scribner *v.* Qualtrough, 44 Barb., 431).

Hence, in such a case, an order made by a County Court removing from his office a committee who had been appointed by the Court of Chancery, and appointing another person as such committee, and directing him to sell a portion of the drunkard's real estate, and all subsequent proceedings, including a deed from the new committee to the purchaser, are void (Ib.).

Pending Suits.—Where, pending a suit brought by a creditor to reach the assets of his debtor, the latter is, by proceedings previously commenced in another court, adjudged to be an habitual drunkard, and a committee is appointed of his estate, the plaintiff's proceedings should be stayed; and if a receiver has been appointed, he should be discharged on paying the moneys in his hands into court (N. Y. Superior Court, Special Term, 1863, Niblo *v.* Harrison, 9 Bosworth, 668).

MENTAL UNSOUNDNESS

AS AFFECTING TESTAMENTARY CAPACITY.

BY JACOB SHRADY, LL. B., COUNSELLOR-AT-LAW.*

THE capacity of a testator is to be determined by the law of the domicile. The general rule is that all are capable of making a will of real estate, except infants, idiots, and persons of unsound mind. Infants may make a will of personal property, the age being eighteen for males, and sixteen for females. Since 1849, married women may also make disposition of their property by will. To which has been added by recent statutes the inestimable right of suing and being sued. The great exception which we have to deal with this evening is that of mental incapacity; the subject may be classified into cases of natural weakness of understanding, and those where defect of intellect supervenes upon and diminishes mental power, including mania and dementia. It is clear where there is a total absence of mental power, it is impossible that a valid transaction can take place. But if there be some understanding, there may be capacity to make a will, and this doctrine seems to have been the result of Blackstone's definition of an idiot, viz., one who has no glimmering of reason, cannot tell his own name, or count twenty; so that it follows, if the testator knew enough to comprehend the amount of his property, and the claims of others upon his bounty, he might make a valid will.

* Read before the New York Medico-Legal Society, May 13, 1869.

The case that goes furthest in this direction, is that of Alice Lispenard, in 26 Wendell, 255. The mental characteristics of Alice were briefly these: she in the first place was mentioned in her father's will as an imbecile; was washed and dressed like a child, even when thirty-five years of age; her head wagged from side to side; she dribbled at the mouth; had sudden fits of anger, so that she would strike children; would sit for hours in front of a window; and continued in that position even after the shutters were closed; had a vacant stare; drank beer and wine, and was often intoxicated, even in the middle of the day. The rule of testamentary capacity adopted in this case was extremely rigorous, and the proposition was sustained that in passing upon the validity of a will, courts do not measure the understanding of the testator, but if he have any at all, and be not an absolute idiot, totally deprived of reason, he is the lawful disposer of his own property, and his will stands as a reason for his actions. Senator Verplanck, delivering the leading opinion of the court of last resort, says: "To establish any standard of intellect or information beyond the possession of reason in its lowest degree, as in itself essential to legal capacity, would create endless uncertainty, difficulty, and litigation; would shake the security of property, and wrest from the aged and infirm that authority over their earnings or savings, which is often their best security against injury and neglect. If you throw aside the old common law test of capacity, then proofs of wild speculations, or extravagant and peculiar opinions, or of the forgetfulness, or the prejudices of old age, might be sufficient to shake the fairest conveyance or impeach the most equitable will. The law, therefore, in fixing the standard of positive legal competency, has taken a low standard of capacity; but it is a clear and definite one, and therefore wise and safe; it holds, in the language of Shelford, the latest English commentator, that weak minds differ from strong ones only in the extent and power of their faculties; but unless they betray a total loss of understanding, or idiocy, or delusion, they cannot properly be considered unsound. The right of testamentary disposition is regarded as a common and natural right, to be

restricted no further than public policy, and the necessary evidence of intent and consent, absolutely require. When the testator is shown to possess such a rational capacity as the great majority of men possess, that is sufficient to establish his will; when this can be truly predicated, bare execution is sufficient, no matter how arbitrary its provisions, or how hard and unequal may be its operation on his family. On the other hand, when a total deprivation of reason is shown, whether from birth, as in idiocy, or from the entire subsequent overthrow of the understanding, whether permanently or existing only at the time of execution, further inquiry is needless; the will is itself a nullity, however just and prudent in its provisions, and with whatever fairness of intention it may have been obtained by well-meaning friends. That intermediate class who fall below the most ordinary standard of sound and healthy minds, whether from the partial disease of one faculty, or the general dulness and torpor of the understanding, are not on that account interdicted from the common right of citizens, and least of all from that of testamentary disposal. But their defect of intellect may furnish the most essential and powerful evidence, in union with other proof, that some particular will or codicil was obtained by fraud and delusion: that it had not the consent of the will and understanding, and was not executed by one who in that respect was of a sound and disposing mind and memory. As in the former class of cases, there is a general legal disability, because the party, from total unsoundness of mind and memory, is unable to consent with understanding to any legal act whatever, so in the latter instance there may be shown an absence of consent to the particular will from inability to comprehend its effect and nature."

But this doctrine is overruled, or at least modified in the Parish Will Case. In the language of the opinion derived from various high authorities, the testator must have sufficient capacity to comprehend perfectly the condition of his property, his relations to the persons who were, or should, or might, have been the objects of his bounty, and the scope and bearing of the provisions of his will. He must have sufficient

active memory to collect in his mind, without prompting, the particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time, to perceive at least their active relations to each other, and to be able to form some rational judgment in relation to them.

The facts of the Parish Will Case are as follows:

Mr. Parish first made his will on the 20th day of September, 1842. He was then fifty-four years of age, in good health, and in the full possession of all his faculties. He was married, but had no child, and none were ever born to him. Of the immediate relatives of his own blood, two sisters and two brothers were then living. His property at that time was estimated at $732,879. By the will he bequeathed to his wife $331,000, or nearly half of his whole estate. Upon the 19th of July, 1849, Mr. Parish was prostrated by an attack of apoplexy; whether, after this attack, he ever possessed testamentary capacity was the chief point at issue. After this attack, three codicils to his will were prepared by Mrs. Parish, and executed, he giving his assent by making signs, which were interpreted by her, the counsel guiding his hand while he made his mark. The greater part of the voluminous testimony taken in the case had reference to the mental condition of the testator, of which the following are the essential features, and those which seem to have exerted most influence in the decision of the court. The alleged loss of understanding on the part of Mr. Parish was dependent upon physical disease. He had had threatening of cerebral disturbance for several years before his attack of apoplexy and paralysis in 1849, and had hereditary tendency to disorders of that nature. The shock of his final attack rendered him insensible and convulsed for several hours. It was soon discovered that his right side was paralyzed, implicating the right arm and leg and the organs of speech. He subsequently acquired a slight control over the right leg, but the arm, which improved somewhat for the first six months immediately succeeding the attack, afterwards entirely lost its power. The left arm and leg were not permanently affected by the paralysis. It is stated that Mr. Parish recovered in a considerable degree his strength

after the first shock, and that during the remaining seven years of his life, he enjoyed good, but not uninterrupted health. He suffered from a severe and painful disease of the bowels in October, 1849; subsequently, he had a number of attacks distinct from the general disease; but the most frequent was dependent upon its cause, viz., the condition of the brain which led to the disease. He had one or more attacks of cholera morbus; one or more of inflammation of the lungs; an abscess formed at one time under the jaw, and threatened suffocation. His power of speech was mainly abrogated on his first attack, and from that time to his death, he was never able to utter anything, except a few imperfectly articulated monosyllables. These were principally *yes* and *no*, which he pronounced very imperfectly; and there is even great doubt whether he ever uttered them intelligibly. He expressed himself most frequently by the use of inarticulate sounds. These are described by the witnesses as sounds resembling *yah*, *yah*, *yah*, *nyeh*, *nise*, *yeah*, and others of a similar character. He accompanied these sounds by gestures, and motions of the left hand and arm, and by nodding or shaking his head. The gestures usually consisted in his waving his hand in different directions with his fingers extended, putting his fingers in his mouth, or raising his hand and shaking it.

The external senses, feeling, hearing, and smelling, do not appear to have been seriously affected. His eyesight was never very good. He would occasionally look at books and papers, but the preponderating evidence was, that he could not read at all. An attempt was made to induce him to write with his left hand, but after several trials, resulting in his copying the first few letters of his name in very doubtful characters, the attempt was abandoned. Block letters were procured, but he would not use them, and pushed them away. He could not supply his own wants, and was washed and dressed, and attended at table like a child, and was frequently unable to control his evacuations.

Before his attack, Mr. Parish is described by his relatives and acquaintances as a placid and unexcitable man of great self-respect, and with great command of temper; his manners

were mild, gentle, and unruffled; a quiet undemonstrative gentleman, rarely exhibiting any emotion, and deeply absorbed in his commercial transactions. After his attack, he manifested a marked change of disposition; he occasionally shed tears; he became petulant, and frequently violent; and in several instances exhibited a want of appreciation of the requirements of decorum and even of decency. He exhibited some recollection of his former daily and familiar places of resort, and of his former habits of business, which he would attempt in trifling matters to resume, as by pulling out his watch when he passed the City Hall clock, or insisting, when driven out, upon being taken to the bank of which he was once a director, or to his old office, or to various merchants with whom he had been in the habit of dealing.

It was said by one witness: "Having been riding out of the city, he would take his watch out of his pocket, look at it, turn round and look at me, when I would ask him if he wished to return; if it was late, or about his usual drive, he would say yes, and nod his head."

Elsewhere the same witness says: "I recollect on one occasion the dining-room clock was run down; when he pointed at the clock, I perceived that it had stopped, and remarked to him that it had stopped and I would wind it up, when he nodded his head."

An old acquaintance testified that he recalled to Mr. Parish a ridiculous circumstance that had happened to them in company many years before, and that Mr. Parish gave him to understand that he recollected the circumstance and laughed at it quite heartily.

These instances, however, of which the above are specimens, were isolated, and, taken together, were not deemed of sufficient significance to avoid the conclusion derived from the facts before stated. After referring to the testator's failure to communicate by writing, or by the use of any artificial means, Judge Davies states the final conclusions as follows: "To what result does this review of the facts and circumstances in this case, adverted to and commented on, lead the mind? On a careful consideration of them all, with a most anxious desire

to arrive at a just and correct conclusion, we are clearly of the opinion that the attack of Mr. Parish, on the 19th of July, 1849, extinguished his intellectual powers, and so obliterated and blotted out his mental faculties, that after that period he was not a man of sound mind and memory, within the meaning and language of the statute, and was, therefore, incompetent to make a will."

The late Dr. John Watson wrote an elaborate opinion on the case, and concludes by saying that the organic disease of the brain was the determining cause of all Mr. Parish's ailments; and that the loss of control of his body and limbs, with the various complications of disease attending this, was merely the external evidence of an internal disorganization involving the functions of the mind and body, and destroying the integrity of the former. Consequently, that Mr. Parish was, from the primary occurrence of paralysis in July, 1849, permanently disabled from executing any document of binding force.

Opinions were also given by Dr. D. T. Brown, of Bloomingdale Asylum, Dr. Luther V. Bell, Sir Henry Holland, and others, equally conclusive, that the testator, from organic disease of the brain, was mentally incapable of executing a will. The only opposing opinion was from Prof. Alonzo Clark, whose objections were fully answered by Dr. Watson.

A will made by one who is at the time under the influence of intoxicating liquors, is not for that reason void. To avoid such a will it must be proved that the testator was so excited by liquor, or that he so conducted himself during the particular act, as to be at the moment legally disqualified from giving effect to it (Peck *v.* Cary, 27 N. Y., 9; Julke *v.* Adam, N. Y. Surr., 1 Redf., 454).

In cases of mania, if the faculties be all disordered, the will will be void—if only a single faculty, as in monomania, it is not fully settled what the result would be. Weight ought perhaps to be given to the suggestion that monomania is only the incipient manifestation of a disorder which will disturb all the mental powers; at all events, it is settled, that should the

delusion affect the very subject matter of the will, then the instrument is void.

A testator was subject to two delusions; one, that a man who had been dead for some years pursued and molested him, and the other, that he was pursued by evil spirits whom he believed to be visibly present. It was admitted that at times he was so insane as to be incapable of making a will. Held, that the existence of a delusion compatible with the retention of the general powers and faculties of the mind will not be sufficient to overthrow the will, unless it were such as was calculated to influence the testator in making it (Banks *v.* Goodfellow, 5 Q. B., 549, American Law Review, vol. 5, p. 302).

The most difficult cases occur when the mind is impaired by disease or old age. The questions arising in these cases are the more troublesome, because mental diseases are generally slow and gradual—the outward appearance of the diseased person does not change; and, although the mind is weakened, the memory of the past is unimpaired. The great test of capacity is an examination of the judgment and the strength of the will; and to inquire whether the sensibilities are unnaturally affected. Thus, if a testator makes an unnatural will; or cannot count money, and readily submits to the dictation of others, and abandons to them the management of his property; or if he weeps without adequate cause, the inference may well be drawn that his mind is impaired, according to the presence or absence of these appearances.

Deafness will also be important to repel any presumption that he may have heard the will read to him. The above facts may not prove a total loss of intellect, but may only show that however greatly it is impaired, capacity to make a will may still exist, if the testator is left to himself. If, however, there be any suspicious circumstances attending the execution of the will, showing attempts to practise on the testator's weakness, then it will be void unless satisfactory explanation is given to the court (Bates *v.* Bates, 27 Iowa, p. 110). Some of these suspicious circumstances are, that the will is in the handwriting of the principal legatee, and that such legatee holds a fiduciary relation to the testator. Another suspicious circum-

stance is, that the will has been concealed from the relatives, or that it differs greatly from former wills, or from previous or subsequently explained intentions. Such circumstances can be explained by clear proof of the intentions of the testator, such as that he gave instructions to the attorney who drew the will, or that the will was distinctly read over to him; and even these will not always do where there is proof of fraud.

From the opinion of Judge Denio, in the Hopper Will Case (33 N. Y., 619), it seems that on questions of testamentary capacity courts should be careful not to confound perverse opinions and unreasonable prejudices with mental alienation. The true test of insanity affecting testamentary capacity, aside from cases of dementia (or loss of mind and intellect), is mental delusion. A person persistently believing supposed facts which have no real existence against all evidence and probability, and conducting himself upon the assumption of their existence, is, so far as such facts are concerned, under an insane delusion. If a testator, at the time of making his will, is laboring under any such delusion, in respect to those who would naturally have been the objects of his testamentary bounty, and the court can see that the dispository provisions were or might have been caused or affected by such delusion, then such instrument is not to be deemed his will.* The great difficulty which arises in all cases of mental diseases, as seen from the above cases, is to fix some standard by which the sanity or insanity of the testator may be satisfactorily determined. This is a difficulty which seems to me almost insurmountable, for the simple reason that it is impossible for the most skillful experts to determine always where insanity begins and sanity ends.

I find in Edmond's Select Cases, vol. 1, p. 35, a definition by the Judge which I will insert in conclusion of this paper, as it seems to me to be quite a correct one, looking at it from a logical point of view. A sane man is one

1. Whose senses bear truthful evidence.

* Shelford on Lunacy, p. 389; Florey *v.* Florey, 24 Ala., 241; Cotton *et al.* *v.* Ulmer, 45 Ala., 378.

2. Whose understanding is capable of receiving that evidence.

3. Whose reason can draw proper conclusions from the truthful evidence thus received.

4. Whose will can guide the thought thus obtained.

5. Whose moral sense can tell the right and wrong growing out of that thought.

6. And whose act can at his own pleasure be in conformity with the action of all these qualities.

All these things unite to make sanity, the absence of any one of them makes insanity.

ANALYSIS OF THE EVIDENCE

IN THE

STENNECKE ALLEGED POISONING CASE.*

ONE of the latest of the many cases which have engaged the attention of the New York Medico-Legal Society, is that of Dr. Paul Schœppe, of Carlisle, Pennsylvania, indicted and convicted of murder in the first degree, by causing the death of Maria M. Stennecke by administering poison to her. The particular kind of poison alleged to have been given is a mere matter of theoretical speculation among the witnesses. The first witness upon this point, a lady boarding at the same hotel, says that the deceased told her that the Doctor had given her something to make her sleep, but that the Doctor denied it. This witness further testifies that two or three hours after Miss Stennecke had taken two grains of tartar emetic with ten grains of ipecacuanha, and had vomited, she found her so weak and drowsy that she got the impression that she was under the influence of morphine. Several witnesses testify to the rather sudden appearance of weakness and drowsiness after the operation of the emetic given about 11 A.M. on the 27th, but none of them state that it was *more* than drowsiness for the first nine or ten hours. No one testifies that any other medicine whatever was given. The patient was seen in this somnolent condition by one of the witnesses

* Read before the New York Medico-Legal Society, July 22, 1869.

about 7 or 8 P.M., but she was then able to get up and undress herself. Hearsay testimony also says that about this same hour she engaged in conversation. A little later, however, perhaps an hour, a knock at the door, followed by a call of her name, was not responded to, and we have no further history of the case till the following morning about six o'clock, when she was found in a state of deep coma from which she was never aroused. Hearsay testimony states that, when last seen by the Doctor between 8 and 9 P.M., she complained of feeling weak and tired, and on that account preferred to leave her door unlocked for the night rather than to rise and lock it.

No one is known to have visited her after this hour, till the servant entered the room at six the next morning, and found her in the state above described. The Doctor was then sent for, came in great haste, and apparently manifested deep anxiety as to the condition of the patient, asking at once that a consultation be called, feeling himself unable to decide alone upon the proper course of treatment.

The consulting physician had no advice to give as to treatment, thinking the case already hopeless. He was not even able to satisfy himself as to the diagnosis. He however, by a process of reflection, and unusual reasoning, subsequently came to the conclusion that it was a case of poisoning by a compound of prussic acid, opium, and corrosive sublimate, because the *symptoms* and the *countenance* of the patient "just put him mind of a chicken-hawk" that he poisoned with such a compound more than thirty years before. This testimony—strange to relate—set on foot an investigation which resulted in the production of two druggists who had sold prussic acid to the Doctor, as they had often done to other physicians in that part of the country, but no evidence is offered that he had bought more than two lots of it during any recent period, and one of these it appears in evidence was a worthless specimen, making it necessary to get a second sample. No ante-mortem nor post-mortem evidence that the patient took any prussic acid is, however, produced. Rumors, originating perhaps from the same source that this remarkable testimony did,

induced an especial examination of the stomach after death, by a professor of chemistry, who stated that by two tests he had detected a "*faint trace*" of prussic acid. Two equally competent chemists, however, swear that the tests employed by the professor were insufficient, and his conclusions without foundation.

The testimony on *this* poison was, therefore, ruled out. There is no pretense that the remaining poisons, given to the chicken-hawk, were employed in this case. Neither corrosive sublimate nor the salts of morphia were found by the post-mortem chemical examination thirteen days after death. All the remaining direct evidence in the case, amounting to some six or seven witnesses, is as to the cause of death, and founded upon a hypothetical case read to the witnesses. The hypothesis was very properly objected to by the prisoner's attorney, on the ground that it did not correspond to the case of Miss Stennecke. The testimony upon it amounted to an opinion that, if accurate, death did not take place from natural causes. The post-mortem record, upon which this conclusion of these witnesses was founded, is that "the vessels of the pia nater were gorged with fluid blood;" there "was a large amount of blood in the cranium," which the witness could not account for, or "how it came there;" thought it "could not have been by hemorrhage, because there was no clot." He "did not discover any evidence of ante-mortem blood," therefore he must have regarded the large amount of blood as a post-mortem accumulation; in short, the witness, who was the physician who made the post-mortem examination, found no evidence to convince him that apoplexy of any kind had existed.

He also stated that "the fourth ventricle was torn through by its softening, before the cord was cut which attaches it to the spinal column." Upon this point another medical witness who assisted at the post-mortem, testifies that "a part of the brain was softened, but he could not say which part."

However important this condition might be regarded by most pathologists, it was not so estimated by these witnesses,

for they both declare under oath that they found no lesion sufficient to account for death.

The organs of the chest were found healthy, as well as those of the abdomen, except the kidneys, which were not examined, that being "deemed unnecessary." When degenerative disease of the kidneys was suggested to this witness, he said that "he did not examine the kidneys, because there were no other evidences of Bright's disease, or other disease of the kidney, which, had they been present, would certainly have attracted his attention;" and that "the chief of those evidences were the œdema and ammoniacal odor which attend that disease both before death and after, and are so prominent when found as to attract the attention of any medical man." "Any microscopical examination of the kidneys would have been useless at that period after death." This witness, however, again appears upon the stand at his own request, to state that he made a mistake as to the necessary presence of œdema, ammoniacal odor, and exudation into the cavities in cases of Bright's or other serious disease of the kidneys; that he remembers one of his own cases in which they did not exist. Several other medical witnesses testify that these evidences of grave kidney disease are often entirely absent. Upon this evidence it is claimed by the prosecution that the fatal coma cannot be attributed to renal disease. Chemical tests were applied to the stomach and a piece of the intestine only.

The circumstantial evidence in the case is furnished by the following history.

Dr. Schœppe is a comparatively young man (though his exact age is not stated), and, if we are to judge from the evidence, he was, during the latter part of 1868 and the beginning of 1869, very poor. Miss Stennecke, on the contrary, was a maiden of sixty-five years and upwards, and, according to the testimony of the attorney, was worth about $45,000. During the summer of 1868, she went from Baltimore, her place of residence, to Carlisle—for what purpose is not known, but probably to pass the summer—and while there became acquainted with Dr. Schœppe. We are not positively in-

formed of the manner of this acquaintance, but it is presumed that it was professional in the beginning, though, according to the published correspondence at a subsequent date, after she had returned to Baltimore, this acquaintance had grown into social intimacy and personal feeling, and apparently mutual interest. By the published correspondence put in evidence, it also appears that among the professional items which Miss Stennecke communicated to her friend, the Carlisle doctor, was an account of the treatment by some oculist of Baltimore for some affection of vision. It also appears in the same correspondence that, in the way of friendly confidence, the Doctor had stated to her that he could make some very satisfactory business arrangements and add much to his happiness if he could but raise $2,000, but in the absence of all immediate prospects of being able to do so, he resigned himself to the will of Divine Providence. This occurrence has been interpreted and uniformly represented as a request on the part of the Doctor to Miss Stennecke to loan him $5,000. If he ever made such request, it was on some other occasion.

The most that can be made out of this is a hint that $2,000 or even $5,000 dollars would be useful to him. Whether to especially gratify him by pecuniary aid, or for some other purpose, we are not informed, it appears that soon after the receipt of the letter conveying this notice of the Doctor's financial wishes, Miss Stennecke returned from Baltimore to Carlisle, and continuing her intimacy with the Doctor, finally, under date of January 14, 1869, advanced him a $1,000 bond, as part of the five thousand dollars she promised to give him as a wedding present, if you please so to call it.

This, according to the evidence, she preferred to do, rather than to give him the control of her property, for it appears that this control she positively retained by the terms of the marriage contract, and still further in proof that she did so, is the fact that on the same date of this transaction, she made a will disposing of her property in case of her death. Just at this critical period, before the Doctor's business arrangements were perfected, and before the projected marriage, she suddenly sickened and died, with symptoms which excited suspicion

that either a crime or a mistake has been committed. The only dose of medicine she is known to have taken, was given to her by the Doctor at about 11 A.M. on the 27th of January, and is said to have been the emetic already mentioned. The day after her death, the Doctor presented a check for fifty dollars, signed by Miss Stennecke, for payment at her bank, and its genuineness was questioned, though it was paid. A few days later, a will, purporting to be the last will of Miss M. Stennecke, appeared in the possession of the Doctor, and he was by it made sole heir to and executor of her estate. This was also regarded by interested parties as a forgery. As the indictment was for murder and not for forgery, evidence upon this point was not admissible, so that we have no means of knowing which of the two wills, one made in favor of Dr. Schœppe on the 3d of December, 1868, and the other we have already alluded to, made January 14, 1869, was the more likely to be genuine. The testatrix died on the 28th January, 1869, about thirty hours after she began to complain, and if we judge from the printed testimony, it is quite as likely that she died from some of the forms of apoplexy, uræmia, or cerebral embolism, as of narcotic poisoning. Her remains were buried in Baltimore, the place of her residence, Dr. Schœppe accompanying them to the grave. Nearly two weeks after their interment they were exhumed, and a very careless and unusual examination of the body was made, in the absence of a coroner or other civil officer, so far as is known, and without the Doctor having any notification so as to give him an opportunity to be represented in the proceeding. The few portions of the body taken by the chemist for examination were very carelessly guarded, and easy of access to those who might have been disposed to impregnate them with poisonous substances, and were finally reported to furnish a "*faint trace*" of prussic acid, a report ruled out by the court as worthless. Finally, all agree that the post-mortem examination, including the chemical testing, was so imperfectly, and loosely, and carelessly, and illegally done, as to render it totally unreliable and unworthy of consideration. Nothing was found to sustain the charge that the

patient had been poisoned, and most important points of an examination to determine whether death had occurred from disease were omitted.

These are the chief features of the testimony of this extraordinary case as presented in a printed form to this Society for its consideration, and for a report upon its merits as they might appear to the Society.

The following is the Society's report:

REPORT OF COMMITTEE.

The undersigned Committee, appointed by the New York Medico-Legal Society for the especial purpose, having attentively examined the printed testimony in the case of the Commonwealth of the State of Pennsylvania against Dr. Paul Schœppe, of Carlisle, who was recently found guilty by a jury of causing the death of Miss Maria M. Stennecke, by administering poison to her, respectfully submit the following report thereon.

From the tenor of the evidence, it seems that the prosecution assumed that the deceased was in the enjoyment of good health up to the morning of the 27th of January, 1869 (*See Smith's Testimony, p.* 1. This assumption, however, is not sustained by the testimony, it appearing in evidence that she had been under the professional charge of the Doctor during a part of the previous summer, and had corresponded with him about her health from Baltimore just before her return to Carlisle, late in the year (*See letter, p.* 17). By this letter it appears that during her absence from Carlisle she had sought the advice and care of an oculist in Baltimore, on account of an affection of her eyes, impairing her vision. The same correspondence alludes to the state of her digestive organs in such language as to clearly show that she had suffered derangement of them, and in fact the Doctor's apprehensions expressed in the same letter, that her apparent improvement in this respect might be transitory, seems to have been realized on the 27th of January, when she was engaged in trying to walk off the feeling of oppression consequent upon over-eating, a condition which finally led to her taking an emetic (*See*

Drew's Testimony, p. 4 and 5). These facts as to the general health of Miss Stennecke for a number of months ending January 27, 1869, when taken into account with the sudden occurrence of serious brain derangement on that day, which finally terminated fatally, are regarded by the Committee as, under the circumstances to be presently alluded to, very strongly suggestive that renal disease existed. We wholly agree with some of the witnesses in the case, that the symptoms of alleged poisoning presented by the deceased, were all of them those well-known to attend some forms of fatal disease of the kidneys. It is, therefore, very much to be regretted that the interests of individuals, of science, and of truth were sacrificed by a neglect, on the part of the physicians who conducted the post-mortem examination, to examine the kidneys and any urine the bladder might have contained. According to the evidence, it appears most probable that an examination of these organs at the post-mortem would have furnished a key to most, if not all, of the mystery which seems to have surrounded the fatal illness of this woman. But this very grave neglect having occurred, we are unanimous in the opinion that a safe judgment as to the real cause of death in the case cannot be formed from the testimony produced. Mr. Hepburn's statement that the "post-mortem examination was not carried to such an extent as would permit any one to say that death did not result from natural causes," is, in our opinion, unquestionably true. *See p.* 47.

The want of the information which the examination of the urine in this case would perhaps have furnished; the omission to examine the kidneys, at the time of the post-mortem, and other omissions to examine vital organs, both by the eye and by chemical agents; and especially the neglect to apply all appropriate tests to the substance of the brain, whose affinities for and slow elimination of toxical agents, are so well known and so readily made available for purposes of scientific inquiry, are omissions and defects which open the way to so much doubt and embarrass the history with so much ignorance, that the question of either accidental or criminal poisoning in the case cannot in our opinion, under the evidence, be taken into seri-

ous consideration. In this connection, however, we deem it proper to call attention to the status this question of *poison* enjoyed during the trial. His Honor the Judge, in his charge to the jury, upon the points presented by the prisoner's counsel, instructed them to "lay the question of death from prussic acid aside so far as it was affected by the testimony" of the only witness who expressed a reasonable opinion that it was or ever had been present in the stomach of the deceased. This, it seems to us, effectually settles the question of death from prussic acid, and leaves only that of death from morphine for us to remark upon. But we do not find the slightest proof, either post-mortem or ante-mortem, that Miss Stennecke took this substance during her fatal illness. As to the purely theoretical and speculative testimony of some of the witnesses, that the symptoms presented during the last hours of life were like those produced by morphine or opium, or like those produced by a combination of those substances with prussic acid, we deem it, under the evidence, as not only totally unworthy of juridical regard, but as in the highest degree disgraceful to the profession which produced it. We would so especially emphasize that of the witness Herman. *See p.* 8. In respect to the expert testimony of the witnesses Dale, Halderman, Crowman, Keiffer, and Zeigler, we regard it as entirely inadmissible, because it either was hearsay evidence, or testimony based upon the findings of a post-mortem examination which, we have seen, was partial, and totally valueless for any scientific or legal purpose. The total failure to detect any kind of poison after death, as well as the entire absence of proof that any kind of poison was administered, together with the fact that the proper means were not employed to ascertain if death did not take place from natural causes, and that the fatal symptoms were not from disease, in our opinion, render conviction upon this indictment impossible.

With this appreciation of the testimony thus far reviewed, the Committee cannot but regard the circumstance of Dr. Schœppe's interest in the estate of the deceased as most unfortunate; for, without that complication, no intelligent and

attentive jury could, in our opinion, upon all the other points of the evidence, have for a moment entertained the idea of his guilt. His conviction, therefore, forced the Committee to the conclusion that, in rendering this verdict, the jury failed to properly comprehend the important legal truth so clearly presented by the Court in its charge, "that *motives cannot be used to determine the primary question that a crime has been committed.*" In conclusion, we express the hope that this case may be again laid before a jury, who, though Dr. Schœppe may have had an apparent motive for the commission of an alleged crime, will not convict him till they first prove that the crime has been committed (which, in our opinion, has not yet been done), and then that he committed it, which is still farther from being proved by the evidence thus far offered.

While the Committee are very decided and unanimous in these views as to the proofs offered in support of the charges of the indictment, they feel called upon, by a sense of obligation to defend justice generally, to make the following remarks upon the circumstantial evidence. First, as to the check of fifty dollars, purporting to have been drawn in favor of Dr. Schœppe by the deceased a short time before death, and presented for payment the day following that event. We regard the testimony presented, as to the genuineness of this paper, as damaging to the general character of the Doctor for truth and veracity; but we are unable to see the slightest reason for the supposition that, if a forgery, it was not committed after the death of Miss Stennecke, and after every proper and faithful effort, in consultation, had been made by the Doctor to save her life. If we are to be guided by the evidence, he certainly had every rational motive to prolong the life of this lady for some months at least, for, by so doing, he would evidently have had less difficulty in obtaining money than in case of her death. There seems to be no reason to doubt that while alive she was willing to furnish him with all the money he required to execute any business plans, and that he knew she was so disposed, and was able to do so. As respects the will, purporting to have been drawn and executed on the third of December, 1868, we find no more evidence of its

having been drawn anterior to the death of Miss Stennecke, than we do that the check was. The only evidence we find, aside from the figures on the face of the document relating to its date, is furnished by the witness Adair, who testifies that either before Thanksgiving or Christmas, Dr. Schœppe copied a *form of will* from a book lent him for that purpose by this witness. Whether this copy was obtained during the latter part of November or of December is therefore uncertain, but to us that point seems unimportant, for there appears more reason to suppose that it was employed after the death of the testatrix, than that she ever had any knowledge of it. As to the circumstantial evidence, therefore, while it is in our opinion very prejudicial to the general character of the accused, we regard it as post-mortem in its relations, and not in the least available on the charges of the indictment.

STEPHEN ROGERS, M. D.
J. C. MORTON, M. D.
E. H. M. SELL, M. D.
I. F. CHAUVEAU, M. D.
JACOB SHRADY, LL.B., Counsellor-at-law.

NOTE.—This report was followed by many similar ones from medical societies and from medico-legal writers in this country and in Europe, and as a conquence, it is believed, the Governor of Pennsylvania withheld his signature from the execution, and. after being in prison about two years subsequent to his sentence, Schœppe was put upon his second trial, under the provisions of two acts of the Legislature of that State, passed for his especial benefit.

First. A general law giving all persons convicted of homicide the right to a writ of error.

Second. A special act to authorize the Court of Oyer and Terminer of the county wherein he was convicted, to open the judgment against him, and to hear a motion for a new trial, in the same manner as if the motion had been made in proper time.

He was acquitted.

The sentiments of this report, relative to the moral character of the man, have since been justified by his conviction and sentence to State's Prison for forging checks in Illinois with the assumed name of J. B. Schulenberg.

NEW YORK, May 17, 1874.

MEDICAL POINTS

IN REGARD TO THE

SUICIDE AND INTEMPERANCE PROVISOS

OF

LIFE INSURANCE POLICIES.

By Dr. S. TELLER.*

Mr. President and Gentlemen:—

We intend to preface the medical part of our thesis, with some legal points of the questions under consideration.

The law recognizes a life insurance policy in the light of a contract, made between the person whose life is to be insured and the company that takes the risk. As such, each party concedes some points as promises, in consideration of which the insurance is effected. On the part of the insured, those conditions consist, besides paying a stipulated sum of money at a certain time or times, in the truthful answer of some questions, as regards health, family affairs, and habits of life, contained in a paper which is called the application for insurance, and which is expressly made a part of the contract. This application contains a proviso to the effect, that if any of those statements should prove, in any particular, untrue, the policy should be void; and if they are untrue the policy is

* Read before the Society, December 9, 1869.

hereby avoided; however immaterial the fact. ("Parson on Contracts," page 466.)

From the questions in the above-named application, we will have to consider to-night the one which refers to habits of the insured as regards temperance.

In the insurance policy proper, are also some exceptions embodied, one of which refers to the death by suicide.

The judicial decision in such a case was: a man cannot take advantage of his own wrong. Parson, page 475, says the following: "A much more difficult question arises when death is self-inflicted in a condition of, and because of, insanity; the authorities on the subject are conflicting."

We cannot but think, however, that the law would say that death by one's own hand did not legally include a death which was self-inflicted, but not with the concurrence or action of a responsible mind or will.

According to these authorities, the insurance company in a given case would have to prove the party who committed suicide to have done so while in sound mind, while the opposite party would have to prove insanity. And here the province of the physician commences.

But, as the application, on which the policy is based, contains the question: Has the party had at any time insanity, and even has the party's family ever had insanity? we may presume that, in case of an affirmative answer, the insurance company either would refuse the risk, or, having taken it, would hardly undertake a litigation; we may, therefore, narrow down the limits of our consideration to cases in which the suicide was considered, at least some time previous to committing the act, as sound in mind.

These cases we will divide into two distinct classes; in the first class we will enumerate cases where the post-mortem examination gives a clue to the cause of aberration of mind, and in the second class we will exhibit cases where this great help of diagnosis is wanting.

We will begin with the first class. Here, the brain and its membranous and osseous inclosures, its serous contents and the blood-vessels which penetrate it, will call for our first inspection.

Whenever we, therefore, find in cases of suicide—not produced by poisons which act on the brain—such changes in the substance of the brain, or in the meninges, which of itself prevent its normal psychological action, we may safely put our finger on them, and affirm that the patient committed the act in a condition which would preclude the idea of his having acted while in his right mind. We will explain this by the following case, which the late Professor Schuh, of Vienna, was in the habit of giving to the class, when speaking of injuries to the brain: A keeper of a prison in Linz (Austria) was attacked one day by a prisoner with a dungfork, which he thrust into his head; the keeper was insensible for a short time, felt indisposed for a few days, but kept still to his work. Two weeks after the occurrence he walked from Linz to Vienna, a distance of about ninety miles, arrived there, and dropped down in the street, dead; on post-mortem examination, the whole of one hemisphere of the brain was found to be changed to an abscess. Suppose this man had committed suicide after receiving the injury, we might safely conclude that such a pathological change on the brain had some influence on his mind. It is a well-known fact that injuries of the brain may be endured for some time without giving rise to any apprehensions; the patients go about their vocations for some length of time, but all at once severe symptoms set in, and the physician has probably some trouble to remind the sufferer of a previous injury as the cause of the affection. I have at the present time a case under treatment which will go to prove this assertion. A strong and robust man, in the full enjoyment of health, complained one evening after coming home from work, of severe headache, and became slightly delirious during the night; next morning I found his speech impaired, slight paralysis of the right side of the body, but best recognized in the face; on making closer inquiries, it is found that he was, about ten days previously, struck on the head by a large piece of iron, which fell from a considerable height; he was stunned for a few moments, received a superficial wound of the scalp which healed in a few days, but returned to work, only complaining of dizziness, until the above-named symptoms called

the attention of his family to his condition. Suppose this man had committed suicide after receiving the injury, would the fact of his previous injury not go far enough to prove he could not have acted in the full possession of his senses?

We may, therefore, put down that all injuries of the brain producing directly or indirectly hyperæmia, inflammation, or abscess, may impair the action of the mind so far as to produce temporary insanity. No doubt every one of us may recollect cases of severe injury of the brain which have run through their course smoothly, the patient recovering in the end, probably without having been absent-minded for any great length of time; but those cases go only to show how much injury the human frame can sometimes endure without permanent damage, but they cannot disprove, in a given case, the absence of a sufficient amount of resistance to the effect of injury. In connection with injuries as a cause of an affection of the brain, producing aberration of mind, we will consider next other affections of the brain which have the same tendency.

Who has ever walked through the wards of a lunatic asylum, without noticing cases where the disease of mind is produced by the effects of meningitis; how often do we find, in dissecting insane subjects, tumors of different kinds, and originating sometimes from the skull, and at other times from the meninges, or the brain substance pressing on the brain? All these diseases may be borne for a long time. A patient suffering from them may consider himself perfectly sound; at most think himself subject to occasional attacks of headache, and even the physician will not find the true cause of the headache. All at once severe symptoms set in; the patient gets insane. Suppose he commits suicide before he becomes a maniac, would any one doubt the fact of his insanity by viewing the body; would not an extensive, firm, membranous adhesion of the meninges on the bone go far to prove absence of mind? Next to these diseases of the brain, we will have to look for others which have a quasi-secondary character, the principle of which is an anæmic condition of the brain, of which we will speak soon hereafter; we may only mention

here that it will not be sufficient by making the post-mortem examination, to inspect the contents of the cranial cavity, but it is required to dissect also the other organs of the body, to have in fact a full knowledge of the physical condition of the deceased before giving a conclusive opinion of his condition of mind.

Before concluding this part of our discussion, I would mention a precaution which we ought not to lose sight of. A large number of suicides are committed by poisons; some of them act on the brain and produce hyperæmia. In these cases we will always have to consider whether the condition of the brain, found on post-mortem examination, is the effect of the drug used, and not the original disease which produced an affection of the mind. This question might be very often difficult to decide.

We come now to consider the second class of cases, those, namely, on which the post-mortem examination gives no positive result.

In those cases we will have to get as clear an anamnesis of the case as we possibly can collect. We will have to be very minute in our questioning, and very careful in considering the slightest circumstance. Insanity manifests itself sometimes in single words; the insane is very suspecting, keeps his ideas to himself. Insanity is often only recognized by acts perpetrated when the patient thinks himself unobserved. We will have, therefore, to collect our facts from the relatives of the deceased, from the persons who were round him during the last weeks or days of his life, from his companions, servants, etc.

In getting at the anamnesis, we ought to consider every period of the life of the deceased, get the history of his infancy, the manner in which he was brought up, the standpoint of his intellectual training, his early habits, the way he conducted his business, and how he passed his leisure time, the books he was fond of reading, his general character and temperament; in fact, we should try to have a full history of his life. It will be of still greater importance to find out whether the character or the habits of our patient have undergone any

change of late. Such a gradual but increasing change of character or habits is one of the most important signs of beginning insanity. The punctual business man neglects his duties, and finds immaterial excuses for it, the housekeeper neglects her household and children. The patient gets melancholic, neglects dress, leaves off reading, is entirely idle.

Another important fact is a sudden change of fortune; good and bad news suddenly coming on have often unseated a previous sound mind. Another point of the greatest importance to be inquired into is the presence of hallucinations. All senses are subject to hallucinations, but principally the sense of hearing. Another and very important cause producing insanity is sexual excitement, be it excess in venere or masturbation. Pregnancy and nursing have also some influence on the mind. Of still greater importance is the question: what diseases had the party gone through, in infancy, as well as in his later years, and especially what was the condition of his health at the time of death.

We will enumerate in the following the diseases which have a predisposing influence on the mind:

1. All diseases which produce poisoning of blood, as syphilis, cancer, tuberculosis, typhus, scurvy. To prove that, we may only remember that in all these the brain is sometimes more or less affected.

2. All diseases which produce general anæmia, great loss of blood after parturition, or injuries, chlorosis.

3. All conditions which produce a shock on the general system, as great operations, the act of parturition and injuries, even if the loss of blood is inconsiderable.

4. Disturbances in the functions of secretion and excretion; here belong all irregularities of the catamenial flow and constipation of long standing.

5. Hysteria in its different forms leads very often to insanity.

6. Epilepsy and St. Vitus's dance and neuralgic affections.

7. Sunstroke.

8. Finally, we have to mention one disease which is of the greatest importance in judging cases of suicide, namely the disease called mania transitoria. This disease has been for a

long time a disputed point among psychologists. Dr. Kraft Ebbing, physician of the lunatic asylum at Illenau in Baden, has published a series of eighteen cases, and gives the following symptomatology.

Mania transitoria is recognized by its sudden appearance; there are no prodromatic symptoms. According to the suddenness of the symptoms the acme is reached soon; in the attacks, all knowledge of its own personality and of the surroundings is gone; the patient acts automatic like, according to his hallucinations; the function of the senses is suspended; the look is fixed, the eye glistening, the face expresses fear; the patient is very violent.

The anatomical change is considered to be a very severe and sudden hyperæmia of the brain. The duration of the attack is from two to six hours; it terminates mostly in a sound sleep, of which the patient awakes mentally well. All remembrance of what happened from the beginning of the attack till after the waking up from sleep is lost.

The following case is taken from Caspar's Hand-book of Medical Jurisprudence: A highly-respected State functionary, who lived in the happiest family circumstances, gets up suddenly in the night furious, having gone to bed mentally as well as bodily healthy. He attempts to throw his wife out of the window. Being prevented from doing the act by neighbors and brought to bed again, he falls, after a while, asleep, gets up next morning and does not know anything about the whole occurrence.

After taking exceptions for all cases, in which any of the above-mentioned diseases can be proved either by the post-mortem examination or by the anamnesis, I will say distinctly that I do believe that suicide is often committed in sound mind, and sometimes with the distinct design to defraud an insurance company. I will give an instance of each out of my own practice. Some years ago a patient was admitted at the Jews' Hospital, suffering from progressive paralysis; the man had very little pain; he got a small dose of morphine every evening to produce sleep; I gave him his regular daily allowance in the evening, and not more. One evening the

bottle containing the medicine was lost, and I had to give him his dose in another. Two days hereafter he committed suicide early in the morning by cutting his throat with the razor which he had borrowed in the evening from the nurse for shaving, and which the nurse forgot to take away from him, after he was done with shaving; he had hidden the missed bottle and taken that quantity with the dose of the last evening to stupefy his senses before committing the act. He was fully sensible hereafter, and confessed the act, and gave as cause his being tired of life.

A second case is the following: A young man called on me with the request to take his name down, and give the next person who died at the hospital a certificate of death in his name. He was very much reduced in his affairs, and had no means to support his family. He wanted some capital to start in business; he had an insurance on his life, which his wife will get on proof of his death. My certificate should prove it. This man committed suicide a few weeks after he called on me. I am perfectly satisfied that he was in sound mind and committed the act for the benefit of his family only, defrauding the insurance company by it.

As a summary of what I said, and as guidance in all cases, I will give in conclusion the following remarks of Flemming on diminished responsibility: Psychical health is that condition of life in which all the functions of the human organism are performed in such a manner that by them the functions of the mind are not disturbed; the opposite condition is psychical disease. It follows, therefore: Not everything wrong in the psychical action is to be considered as disease, but only those which are caused by disturbances of the somatical life; therefore errors, moral shortcomings, and passions are to be excluded. It follows further that not every abnormal condition of the somatical life is symptom of physical disease, but only those which are in causal connection.

Health and disease, in body as in mind, are extreme expressions; there are many conditions which lie between; these intermediate conditions are the doubtful cases, which give rise to diverse opinions.

It is, therefore, the duty of the physician, by the exploration of these cases, to find out the symptoms of health or disease, to explain his causes scientifically—the conclusions he has to leave to the legal fraternity.

We mentioned, in beginning, that amongst the questions about habits in the application for insurance, is one in regard to temperance.

The legal explanation in regard to it reads in Parson, page 471, as follows: This question is variously phrased, but whatever language is used, it must be construed with reasonable reference to its intentions; this intention must be to confine the insurance to persons who are temperate, and there must be always a wide debatable ground between temperance and total abstinence.

Out of this we may conclude, the insurance company has no right to require the insured to abstain totally from intoxicating liquors, but only to be temperate in their use.

To prove intemperance it will be required to prove intoxication; this expression indicates that we have to deal with a disease; intoxication is the abbreviate expression for intoxication with alcohol; the disease is alcoholismus. One party will, therefore, have to prove alcoholismus, the other to disprove it; this is the province of the physician in the question. To contend that a man has led an intemperate life, so much as to affect his health, it requires that he has shown symptoms of alcoholismus during life, and that the disease has produced anatomical changes in his organic condition. We will point out these symptoms: Alcoholismus is either an acute or a chronic disease; the acute disease manifests itself in an acute affection of the intestines and of the brain. In the first we find on the surface of the stomach and intestines a sediment of albuminates by alcohol, the epitelium shrunken, light or deep red or even cauterized spots of dissolved mucous membrane, with suggilations and fluid exudations underneath the last mentioned membrane; in the latter, the substance of the brain extraordinarily hardened, the ventricles often filled with a fluid which smells of alcohol, sometimes with extravasation of blood; similar extravasations are found in different parts

of the brain. The plexus choroideus, the sinuses, and the meninges are overfilled with a dark thickish blood, the cerebrospinal fluid augmented, and underneath the arachnoidea are lymphatic or serous exudations. The spleen, liver, and kidneys are dark, red-colored, and filled with dark blood; the left ventricle and the arteries are empty; the right ventricle, the large veins of the chest and abdomen are filled with blood, the air passages contain a foaming mucus, the substance of the lungs is expanded and filled mostly with dark, thin, fluid blood.

In the chronic affection produced by intemperate use of alcohol, we find during life a certain general discrasia. The functions of all organs are increased, the pulse and respiration more frequent, the blood is filled with fat (lipæmia), by degrees an accumulation of fat takes place, which is deposited in the muscular and cellular tissues, and produces an affection called lipomatosis. But soon the digestion is disturbed by the poisoned blood, this disturbance goes over to the organs of respiration, circulation, and innervation; dyspepsia and diarrhœa follow next, and afterwards diseases of liver and kidneys, terminating in a hydræmic condition. Therefore the saying: "*Qui vivit in vino, moritur in aqua.*" In combination with these general symptoms, there are always one or more systems or organs especially affected. The skin is in the beginning red, but gets soon pale and has a cachectic aspect. The intestinal canal is the seat of catarrhalic affections. The kidneys suffer more or less, the bladder gets paralyzed. The sexual functions are greatly disturbed; *impotentia cœundi et regenerandi* is a common affection of drinkers. The lungs are affected by chronic catarrh, which makes them inclined to pneumonia, and goes very often over in œdema and emhysema. The throat suffers also from catarrh, producing aphonia. The most common seat of affection is the nervous system: tremoris delirium, hallucinations, encephalitis, encephalomalacia, dementia, dipsomania, epilepsia, paralysis, anæsthesia, and apoplexia may be enumerated. Accordingly the anatomical lesions after death will be: the bones contain, according to Rokitansky,

fat, which is accumulated at the expense of the bony tissue in the medullary canal. The muscles are thin and pale, the cellular tissues filled with fat. The stomach and intestines thickened, its mucous membrane eroded, ulcerated, and softened, its muscularis thickened. The liver differently changed from cyrrhosis to fat liver. The spleen smaller, its substance loosened, its capsule thickened, the pancreas sometimes enlarged. The kidneys congested, or even the seat of Bright's disease; the testicles very often atrophied. The heart in its muscular tissue fatty degenerated, in its substance hypertrophied, the arteries show the atheromatous process, the lungs œdematous, the brain more or less affected as in the acute disease.

This description of the disease will have to guide us whenever the question of intemperance is raised; we must say, in conclusion, that here, as in all legal questions, the physician has only to point out the symptoms; he forms his opinion according to these, not influenced by the vulgar application of the terms of sobriety or intemperance.

HEREDITARY INFLUENCE

IN

MENTAL DISEASES.

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

The subject of the hereditary transmission of pathological states and tendencies has lost none of its interest, despite its great antiquity. Of late, indeed, a new impulse has been given it by the researches of Mr. Darwin, whose volumes on "Animals and Plants under Domestication" contain as lucid an exposition of natural inheritance as can be found in the literature of any language.

For ourselves, as professional men, the topic has a special interest. It opens out to us one of the most momentous and absorbing problems of human life; the organic relations of man with the past and future. Its study shows us how materially his interests are affected by the laws of inheritance, whether he be regarded as the descendant of his parents, as a responsible member of society, or as the progenitor of future generations.

Every infant born into this life bears the impress of some ancestral peculiarity, although it often remains dormant until puberty, or middle age, with its trials and responsibilities, or some accidental circumstance brings it out into full and often sad expression.

The law of the hereditary transmission of tendencies, even such as are destructive to the individual, appears absolute and

* Read before the Medico-Legal Society, New York, December, 1869.

uncontrollable, in some instances; in others, susceptible of modification. Occasionally, indeed, an individual may, by the exercise of great circumspection, avoid it; as when a descendant of consumptive parents escapes the family disease by rigidly observing the necessary hygienic rules. But it will assail another at the very citadel of reason, and deprive him of that guide and chart—reason—by which alone he can hope to sail safely on the unexplored seas of life.

The morbid mental and bodily conditions arising in consequence of individual conduct are as liable to be inherited as those which descend from ancestral sources, too remote and devious to be always successfully traced. In this sense, at least, the society of the future is cast in the mould of to-day. Our good or evil conduct will permeate the generations to come, influencing them for better or for worse.

In the following pages I purpose reviewing some of the more important laws of natural inheritance. I shall then endeavor to apply them to the explanation of the phenomena of *hérédité* in mental diseases. Much of our time will be occupied with certain general considerations which it is important we should examine before commencing to study the special subject of this evening's discussion.

Organic forms procreate their species in two ways—the sexual and asexual—that is to say, all plants and many lower animals procreate in either way; all higher animals in one only—the sexual. Waiving all consideration of this particular branch of the subject, I wish now to call your attention to a fact, namely, the persistent tendency of offspring to reflect the general, and sometimes even the special, characteristics of their parents. This well-verified fact, Mr. Herbert Spencer remarks, "has been rendered so familiar by daily illustration as almost to have lost its significance. That wheat produces wheat—that existing oxen have descended from ancestral oxen—that every unfolding organism eventually takes the form of the class, order, genus, and species, from which it sprung—is a fact which, by force of repetition, has acquired in our minds almost the aspect of a necessity." *

* Principles of Biology, vol. i., p. 238.

The same instructive writer says, speaking of the persistence of varieties: "From all sides evidence may be gathered showing a like persistence of varieties in each species of animal. We have our distinct breeds of sheep, our distinct breeds of cattle, our distinct breeds of horses,—each breed maintaining its characteristics. The several sorts of dogs which, if we accept the physiological test, we must consider as all of one species, show us, in a marked manner, the hereditary transmission of small differences—each sort, when kept pure, reproducing itself not only in size, form, color, and quality of hair, but also in disposition and specialty of intelligence." *

If you plant a slip from a shrub, and provide it with the essential means of healthy life, it will grow to be an individual similar to the parent from which it was taken. If you cut a hydra in pieces, each section will reproduce an individual strictly modeled after the parent type. I adduce these trite examples because they exhibit the fact of inheritance in its simple and elementary form, uncomplicated by the influence of a second parent. And for this very reason it is a more uniform consequence of this than of the more complex or sexual mode of genesis. The latter requires two factors for the procreation of offspring, namely, a male and female parent; a combination by which the tendency to *hérédité*, though much modified, is not materially affected. We call this phenomenon *atavism*, a word derived from *atavus*, ancestor, and used to denote the tendency to repeat ancestral peculiarities. A few examples of this phenomenon, though not at all necessary to prove its existence, will help to fix it more firmly in our memories. We have all, doubtless, observed, that certain peculiarities of feature, complexion, accent, tone of voice, etc., are transmitted from parent to child. I remember a son who unconsciously copied his father with remarkable precision in his way of walking, of entering a room and of sitting on a chair, in the disposal of his limbs, in the tone and modulations of his voice, and in the frequent use of certain peculiar methods of expression. Even very exceptional habits are inherited.

* Op. cit., p. 240.

For instance, a young female child in the cradle had transmitted to her from her father a trick of sleeping on her back with the right leg crossed over the left, and persisted in it, though many efforts were made to cure her. Many such examples could be cited, were it necessary, to illustrate the force of the inheritance of even very minute and unusual characteristics.

Now, one of the invariable sequences of the law of sexual genesis is this: the offspring, though inheriting more of one parent than of the other, differs from both. This is the initial point of physiological variation. What is variation? I answer, the sum of certain peculiarities in offspring, by virtue of which it is, strictly speaking, unlike either parent. Returning, for a moment, to the brute creation, we find a striking example of variation in the mule. In some of its parts this animal copies the ass; in others, as the body and neck, it takes after the mare. Such is the normal and universal result of the sexual mode of procreation.

Inherited peculiarities may be conveniently arranged under two headings: (1) those which are congenital, and not traceable to any extrinsic cause; (2) those not congenital, but "resulting from changes of functions during the lives of individuals bequeathing them." * Out of the many recorded examples of the first, or so-called spontaneous, class of variations in the human family, I shall quote the following, taken by Professor Huxley from a monograph by Réamur, on the history of a peculiar variation in a Maltese family named Kellia. The father, Gratio, was born with six fingers and six toes on each hand and foot. At the age of twenty-two he married a Maltese lady having the orthodox number of fingers and toes, and they had a family of four children. What happened? Did the participation of a normal influence in the act of procreation obliterate this peculiarity, or merely modify it? As the result will show, it merely modified it. Salvator, the first of the four children, had six fingers and six toes, like his father; the second, George, had five fingers and five toes, like his mother, but one

* Herbert Spencer, op. cit.

of them was deformed; the third, André, had five fingers and the same number of toes, all perfect; the fourth child was a girl; her name was Marie, and she had five fingers and five toes, but her thumbs were deformed. In due time, all these children married five-fingered and five-toed people. Mark again the result. Salvator had four children, two boys, a girl, and another boy. The first two boys and the girl were six-fingered and six-toed, like their grandfather; with the third boy there was nothing peculiar. George had four children, two girls with six fingers and six toes; a third girl with six fingers and five toes on the right side, and five fingers and five toes on the left side, and a boy who had no peculiarity. André, who was well formed, had many children, all well developed. Marie had four children; the first, a boy, was six-toed, but the other three were normal.

The history of this family illustrates three points, namely: the so-called spontaneous origin of variations; their tendency to be repeated in the offspring, and their modification by fresh accessions of paternal and maternal influences. Chiefly on this latter account a check is often put to the career of variation, and there occurs a reversion to the normal or primitive type.

The second class of variations, as already observed, comprises those resulting from changes of function during the lives of the individuals bequeathing them. These modifications of function result from changes in the external relations of the individual, acting through the physiological laws of nutrition. Though not primarily inherited, they are transmissible when once fairly established.

The influence of changed external relations may be observed in both the animal and vegetable kingdoms. Plants, when removed from one zone to another, undergo certain manifest alterations in structure and function, technically called "a change of habit." The same result has been observed among animals. "Some of our countrymen," says Sir Charles Lyell,* "engaged about the year 1825 in conducting one of the principal mining associations in Mexico, that of Real del Monte, carried

* Principles of Geology, 11th edition, vol. ii., p. 297.

out with them some English greyhounds of the best breed, to hunt the hares which abound in that country. The great platform, which is here the scene of sport, is at an elevation of about 9,000 feet above the level of the sea, and the mercury in the barometer stands habitually at the height of about nineteen inches. It was found that the greyhounds could not support the fatigues of a long chase in this attenuated atmosphere, and before they could come up with their prey, they lay down gasping for breath; but these same animals have produced whelps which have grown up, and are not in the least degree incommoded by the want of density in the air, but run down the hares with as much ease as the fleetest of their race in this country." This, though given by our author as an example of inherited instinct, is wholly the result of climatic influences upon the developing organism of the whelp. It is an excellent example of modifications which, though not inherited, are hereditary.

The same observation is equally true of man. Abundant illustrations of it may be found everywhere. Look, for instance, at the differences which climate, food, and grade of civilization have made between the European and the Asiatic, or the Anglo-American and his neighbor, the aboriginal red Indian. The same change is taking place on a small scale in this country which, granting the unity of the human species, must have gone on from the remotest ages throughout the world. I allude now to the change occurring in foreigners who sojourn in these United States. It is not limited to the mere surface, but permeates their habits, thoughts, and modes of expression. It is observed, not only in the lower classes of society, but to a considerable extent among persons of culture, whose minds have been trained in the schools and imbued with the traditions of the eastern hemisphere. Mr. Hepworth Dixon devotes a very interesting chapter of his "New America" to an exposition of the mutual influences exercised by the "red and white races of the West." "No race of men," he writes, "ever yet drove out another race of men from any country, taking their lands and cities from them, without finding, on the spot which they came to own, a local genius which affected their polity, their

usages, and their arts." Such has been the Nemesis, if I may so speak, of many triumphant nations; of the Romans after the subjugation of Greece; of the Normans after the conquest of England; of the Franks after the conquest of Gaul, and of the English after the conquest of Ireland. "More Irish than the Irish themselves" has long been proverbially true of English settlers on the soil of the Emerald Isle.

From many examples at hand, I will select just one to show the tendency of changes induced in the parent to become hereditary in the offspring. "Some few years since, Dr. Brown-Sequard, in the course of inquiries into the nature and cause of epilepsy, hit on a method by which epilepsy could be originated. Guinea-pigs were the creatures on which, chiefly, he experimented; and, eventually, he discovered the remarkable fact that the young of these epileptic guinea-pigs were epileptic; the functionally established epilepsy in the parents became constitutional epilepsy in the offspring." *

Passing from this part af our subject, yet keeping its essential facts in mind, let us clear a little more of the ground about the principle of *hérédité* in disease by searching for the causes which modify its action. One of the most important of these is reversion, which means a turning back of the offspring to certain original characteristics which were apparently lost, but, in reality, only dormant during one or more intermediate generations. When a child resembles in some particular quality a remote blood relation of the direct or collateral line, it is said to revert—so far, at least, as the quality is in question—to that relation. In such cases the original peculiarity is transmitted, though in a latent state, to the individual affected by it, through the intervening members of the family.

The tendency to revert is very strong, and much speculation has been indulged in regarding the number of years which must elapse before it is entirely lost. Mr. Sedgwick cites the case of a French family, of whose members, during six generations, eighty-five out of six hundred had been afflicted with night-blindness, and adds: "There has not been a single

* Herbert Spencer, Biology.

example of this affection in the children of parents (belonging to the same family) who were themselves free from it." * This example may be held to prove that adhesion to the normal type is more powerful, under given circumstances, than reversion to that which is abnormal.

Prepotency and sex both modify the hereditary tendency. By prepotency is understood a superior transmitting power of one parent over the other. A line of male parents, for example, may transmit certain characteristics to male issue, despite the influence of many mothers.

The modifying influence of sex is acknowledged by the very highest authorities, among them by Mr. Darwin, who has the following on the subject in the work from which I have already quoted: "From the various facts recorded by M. Prosper Lucas, Mr. Sedgwick, and others, there can be no doubt that peculiarities first appearing in either sex, though not in any way necessarily or invariably connected with that sex, strongly tend to be transmitted by the offspring of that same sex, but are often transmitted, in a latent state, through the opposite sex." In the remarkable papers by Mr. Sedgwick, here referred to, occurs the following illustration of the truth of the above observation. A boy, aged fourteen years, was afflicted with ichthyosis, a disease hereditary in the family for three preceding generations. It first appeared in the grandsire at the age of seven or eight years. He had three sons and three daughters. One son died at the age of five years and one at seven, both being free from the disease; the third lived, and though past middle age, manifested none of its symptoms. The three daughters grew up, escaped the disease, and married. Two of them had children, the oldest four. The first-born of the oldest, a girl, had no sign of the disease; the other three were boys, of whom the oldest, aged fourteen years, and the youngest, aged nine, had the disease, while the other son, aged eleven, was free from it. The other daughter had three children, the oldest of whom, a girl, was free from the disease; the other two were boys, and had the disease in a very decided form.

* British and Foreign Medico-Chirurgical Review, 1861–63.

The principle of sexual limitation is clearly shown in the remarkable history of this family, a history which also illustrates the phenomenon of reversion in the non-appearance of the disease in the second generation, and its reappearance in the third.

Finally, age equally affects the course of inheritance. It has been frequently observed that diseases are inherited at corresponding periods in the lives of parents and their children. The Lecompt family is an example in point. Here blindness was hereditary for three generations, no less than thirty-seven descendants—children and grandchildren—having been afflicted with it at about the same age—between the seventeenth and eighteenth years. When an exception to this rule occurs, it is generally in favor of an earlier appearance of hereditary disease in the offspring than in the parent.

Turning our attention now to hereditary mental diseases, and viewing them in the light of the foregoing principles, we shall broadly define them to be variations from the healthy or normal state of mind, arising either congenitally or in consequence of the modifying effect of accidental causes on nervous structure and function. A fair application of the principles already set forth will enable us to reconcile and explain the apparent anomalies and contradictions of inherited mental states.

The proportion of cases of insanity into which hereditary taint enters is variously stated by the authorities, some placing it as high as sixty-nine per cent., others as low as twenty-six. "Authors," says Dr. Maudsley, "are not agreed as to the proportion of cases of insanity in which positive hereditary taint is detectable; some, like Moreau, putting it as high as nine-tenths, others as low as one-tenth. The most careful researches fix the proportion as not lower than one-fourth, if not so high as one-half; and there can be no doubt that the tendency is to increase the proportion, as investigation becomes more searching and exact."*

* Article "Insanity," "Reynold's System of Medicine."

To constitute the hereditary predisposition to insanity, it is not essential that the parents or relatives should have been actually insane. Nervous diseases often undergo metamorphoses in passing from one generation to another, a fact fully insisted on by M. Moreau in his able treatise entitled, "*La Physiologie morbide, dans les rapports avec la Philosophie de l'Histoire.*" The more important of these nervous diseases are insanity, epilepsy, chorea, hysteria, neuralgia, and catalepsy. It has been observed, with respect to physiological peculiarities, that they are transmitted in their identity to the offspring, but such is not the rule among pathological states. The child of an epileptic may be, not epileptic, but insane. The same fate may overtake the child of a drunken man or a hysterical woman. Furthermore, it does not always follow that the inheritor of the insane temperament must go crazy,—a proposition quite intelligible when it is remembered that hereditary predisposition is no abstract influence, but a concrete organic state always bordering on actual disease, yet generally wanting some exciting cause to make it such. One of several events may, therefore, happen to the inheritor of this temperament. Either his insanity (should he become insane) may result immediately from the inherited taint, or its advent may be indefinitely postponed by judicious bodily and mental training, or it may be developed by injudicious management in youth, as by too much mental application, by capricious, unreasonable, or cruel treatment; or, finally, it may be precipitated by such occurrences in the development of the organism as the periods of puberty, middle age, childbearing, and change of life.

According to very good authority, certain practices, as intermarriage and intoxication, contribute largely to swell the percentage of cases of hereditary insanity.

Esquirol considers it impossible to estimate the number of French nobles of his time whose insanity was due to the then common custom of intermarriage among the upper class. Others have made similar statements respecting the descendants of the old Scotch and English Roman Catholic families. The family records of the royal houses of Europe—notably of

the Spanish branch of the house of Austria—afford examples of the evil consequences of this same custom.

The records of antiquity teach us that most ancient nations practiced marriages of consanguinity. In Persia they were allowed between fathers and daughters, mothers and sons. In the early stage of the Hebrew people marriage was permitted between near relatives in the collateral line. In Athens it was legalized between brother and sister of the same father, and in Sparta between brother and sister of the same mother.

The question of the influence of intermarriage in the causation of insanity may be discussed from two distinct standpoints. We may either consider whether intermarriage is of itself a sufficient cause of degeneracy in its offspring; or whether it may not be such in appearance only, the real fundamental cause being the cumulative aggravation of an already existing family disease by the process of breeding in and in. There is an obvious difference between these two aspects of the question, requiring a separate method of investigation for each. In this paper, however, I will be obliged to limit myself to the following observations on the subject.

Consanguinity, or blood relationship, may be either direct or collateral. Direct consanguinity is that existing between generator and generated in the ascending or descending scale. A father, for instance, is directly consanguineous with his daughter, a mother with her son, a grandfather with his granddaughter. Collateral blood relationship is that obtaining between the individuals of the collateral branches of a family, as brother and sister, uncle and niece, aunt and nephew.

The objection to such marriages, namely, that they are a *vera causa* of degeneracy in their offspring, is supported by a very respectable array of evidence drawn from the organic world in general. I may partly state it in Mr. Darwin's words: "It is apparently a universal law of Nature," says he, "that organic beings require an occasional cross with another individual;"* and he proceeds to show that although, owing to

* Fertilization of Orchids.

the peculiar construction of the generative parts of orchids, self-fertilization would be much more easy of accomplishment than the scattering of the pollen to other flowers, it is nevertheless an unusual occurrence. He thinks we may infer from this fact that there is something injurious in the process of self-fertilization, and asks whether we may not consider it as probable, "in accordance with the belief of the breeders of our domestic productions, that marriage between near relations is likewise in some way injurious," etc. To the argument from the behavior of orchids is opposed the fact, that, among some of the same species, self-fertilization, though the rule, is not followed by any evil effects.

From the animal kingdom, also, observations have been adduced to show the evil consequences of breeding in and in. It is stated, for instance, that the pigeon and the pig gradually die out under this process. But, on the other hand, it improves the breed of bulls and horses.

If such wide discrepancies exist between the observations made on plants and animals,—objects whose actions can be watched with such close scrutiny,—we should expect to find them even greater among individuals of the human family, who, as Mr. Darwin remarks, propagate slowly, and cannot be submitted to the same tests as other organisms.

Much has been said on both sides of this discussion, and numerous statistics have been given for and against the assertion that intermarriage leads, by itself, to various expressions of degeneracy in the offspring,—sterility, deaf-mutism, idiocy, and epilepsy. Although I do not intend to occupy the time of the meeting with these statistics,—none of them being conclusive one way or the other,—I may state a few just by way of showing the remarkable conflict of opinion on so important a topic.

It is declared that consanguineous marriages cause deaf-mutism. The opponents of this assertion cite the case of the Jews to disprove it. How frequent such alliances are among this race is not stated, but their law does not forbid them, and it is altogether likely that they contract them as frequently as

Christians. Now, it has been stated on good authority—the Chief Rabbi, M. Isidor—that, among the Jewish congregation in Paris, then numbering 25,000 souls, scarcely four deaf-mutes were to be found. Lately M. Boudin presented some statistics to the Academy of Sciences of Paris, in which he stated that two per cent. of the marriages in France were consanguineous. The proportion of deaf-mutes born of such alliances in Lyons is, to the whole number of deaf-mutes in the same city, only twenty-five per cent.; in Paris, twenty-eight per cent., and in Bordeaux, thirty per cent. Bearing directly on the same side of the discussion are the statistics collected by M. Aug. Voisin, relating to the results of such marriages in the commune of Batz, Brittany. In this commune there were 3,300 persons, all well isolated from the surrounding country. "Among this population 46 marriages took place between cousins, viz., 5 between cousins-german, 31 between cousins of the next degree below, 10 between cousins of the next again." The 5 had issue 23 children, free from all constitutional disorders, 2 only having died, the cause of death being some casual disorder. The 31 had issue 120 children, "none of whom labor under any constitutional infirmity," and 24 of whom died of acute diseases. The 10 had issue 29 children, "all born healthy, 3 having died of accidental diseases." Two females were sterile, "the parents being related in the third degree." Insanity, idiocy, and deaf-mutism were unknown.*

By contrasting such flattering statistics with the following it will appear how very unsatisfactory the whole inquiry is as it now stands. Dr. Beamis, of Louisville, presents what follows as the result of his investigations into 34 consanguineous marriages. Of this number 7 were fruitless, 27 had 192 children, 58 of whom died in childhood. Of the remaining 134, 46 are called healthy; 32 are described in a general way as "deteriorated;" 9 are not reported; 47 still remain, of whom 19 are scrofulous, 4 epileptic, 2 insane, 2 dumb, 4 are idiots,

* The above facts are taken from an excellent article in the *Fortnightly Review*, 1865, p. 710.

2 blind, 2 deformed, 5 are Albinos, 6 have some defect of vision, and one is choreic!*

Respecting alcoholic excesses as a cause of degeneracy in offspring, there is not room for the same variety of opinion. Upon this point I adduced ample testimony at a previous meeting, and what I have to say now will be merely by way of further confirming what I then stated. It is affirmed on the authority of Dr. Inman that drunkenness—that is, the disease called methomania—may be hereditary in a family for generations, irrespective of education and example. He, himself, has watched the children of inebriates and has seen them become precocious drunkards, though early removed from the influence of evil surroundings, and taught the necessity of intelligent self-denial. Morel, also, states that the whole nature of the descendants of drunkards is often depraved. These unfortunates are remarkable for apathy, indecision, defective moral sense, and a long catalogue of purely nervous disorders. M. Lucas gives a striking case to illustrate the tendency of alcoholic abuses in parents to become a mania in their offspring. A bachelor of literary tastes led a regular, busy and economical life for thirty-four years, at which period he was somehow seized with an uncontrollable desire to drink. During eight consecutive days of every month he gave himself up to this passion. In seven years more he died. His father was a confirmed drunkard, and had died by his own hand. His two brothers also became habitual drunkards.

In accordance with what I have already said respecting the determining causes of insanity, when the hereditary taint exists, though in a latent state, is the observation of Mr. Darwin, that "in most cases the appearance of any inherited disease is largely determined by certain critical periods in each

* Since the above was written, Dr. Mitchell, of the Edinburgh College of Physicians, has given the results of his inquiries in the same field. He objects to marriages of blood relations on the ground that they increase the risk of transmitting morbid states. He says that if a deaf-mute marries a person with the faculties of speech and hearing, the chance of their having a deaf-mute child will be about 1 to 135; but if both father and mother are deaf-mutes the risk will be increased to 1 in 20.

person's life, as well as by unfavorable conditions." Esquirol narrates the case of a woman, aged forty-two, who commenced wine-drinking to relieve some distressing sensations attending her climacteric period. Not content with this, she took to brandy, and soon became a confirmed drunkard. Simultaneously, her disposition underwent a complete change; she abandoned all her occupations, and lost every feeling of affection for her family. She continued in this state for six years, after which, the menstrual discharge becoming colorless, she recovered. She now took a decided aversion to every kind of intoxicating drink, even wine, and lived soberly, in the enjoyment of excellent health, till the age of seventy-two.

A few examples of *hérédité* in other forms of insanity will suffice for this division of our subject.

The passion for gambling may be a manifestation of insanity, and as such may be inherited. M. Lucas narrates the case of a woman of wealth and social position who passed all her nights in playing for money. Her two children, son and daughter, were equally addicted to the same vice.

Erotomania may be inherited. The author just mentioned instances the case of a man of rare business talent in his business as a cook, who, from his boyhood up to his sixtieth year, had been immoderately addicted to sins of impurity. A natural son, who had not seen his father from early childhood until he was nineteen years of age, began by manifesting precocious signs of erotomania, and finished by becoming as debauched as his father.

The tendency to kleptomania may likewise be inherited. Dr. Steineau has recorded a case of the kind which came under his own observation. The individual in question was known in the neighborhood as "the thief." His son was addicted to acts of petty larceny. His grandson began, at the early age of three years, by stealing edibles; next, small, then large sums of money. Finally, he became an expert pickpocket, and having been ultimately detected in one of his light-fingered operations, was committed to the house of correction, he having reached only his fourteenth year.

The hereditary tendency to suicidal melancholy has been

urged by many writers on this important subject. Cazauvieilh reports that the fact of hereditary influence was established in twenty-two out of eighty-one cases of suicide which occurred in a circumscribed section of the department of Oise, in France.

If the foregoing statements be founded in correct observation, they establish the existence of a distinct class in all known communities, requiring to be governed on special principles. Every one who has bestowed even a passing glance upon the physical and mental peculiarities of habitual criminals, will readily appreciate the words of M. Morel, when he says, "the conditions of degeneration in which the heirs of certain faulty organic dispositions find themselves, are revealed not only by exterior typical characters, easily to be recognized, such as a small, ill-formed head, predominence of a morbid temperament, special deformities and anomalies, etc., but also by the strongest and most incomprehensible aberrations in the exercise of the intellectual faculties,* and of the moral sentiments." But upon the great problem of the pathological basis of crime I cannot attempt to enter at present. I am fully convinced, however, that it lies at the root of much criminal conduct, and that no scheme of penal law can be justly administered without full allowance being made for this fact. Upon this point I shall have something more to say presently. Fortunately there are degrees in this degeneration, and though some may be beyond hope of recovery, others are

* The intellectual feebleness of habitual criminals is well illustrated in the following remarks which I extract from an address on "Prisoners and their Reformation," delivered before the late International Penitentiary Congress, by Z. R. Brockway, Esq., Governor of the Detroit House of Correction. "All who have studied criminals closely by actual contact with them will have observed the undeveloped, incongruous or unbalanced condition of their higher mental faculties, and the consequent sway of their animal instincts. I have attempted to teach a class of twenty criminals of the lower type the difference between letters, words, and sentences in composition without success. After an hour of instruction they were unable to state correctly the number of words in so simple a sentence as the following, namely, 'John bought a horse,' the class—every member of it—declaring the two words 'a horse' to be one word."

susceptible of improvement under wise management. I have already observed that a judicious course of physical and moral training may prevent the development of insanity in a person not too strongly predisposed thereto; and it is not too much to add that many of the dismal histories recorded in books as illustrations of the force of *hérédité*, might never have been written had this fact been sufficiently appreciated. It is clearly the duty of all who exercise any manner of supervision over this class of persons, to study attentively and charitably the weak points in their dispositions; to watch the first dawning of conscience in them, or, if need be, to endeavor to create one by dint of persevering efforts at moral, religious, and intellectual education. If we feel a glow of tender sympathy when following the progress of a healthy, vigorous soul from darkness to light, a typical record of which we find in the noble "Confessions" of St. Augustine, how much more fully and spontaneously should our commiseration flow out to those of our fellow-creatures who are morally deformed and out of joint; who, burdened with the natural consequences of others' sins, lack the volitional power to throw them off. Among the many good things told of the Chinese, it is recorded that, when a criminal is accused before their tribunals of justice, the charge is examined in relation to the man and the man in relation to his circumstances, his family history in particular. They seek to know his temperament, the character of his impulses, his degree of self-restraint, his history, and that of his progenitors, all of which data they employ as aids in determining the degree of his responsibility. Whether this statement be true or not, I cannot say, but at least it appears to me to embody the only feasible plan of dealing discriminately with habitual criminals. No such thoroughly scientific method has ever been adopted into our system of criminal procedure, and yet the day is now come when something of the kind must be attempted, if we are to deal with crime on principles worthy of the advance of modern intelligence.

We have to consider, finally, some of the chief causes which modify the transmission of insanity. Of these the first in order is reversion, after which follow age and sex.

The following examples will serve to illustrate the law of reversion in mental unsoundness. William, of Lunenburg, surnamed the Pious, founder of the Hanoverian dynasty, became blind and insane. After him followed seven generations free from mental disease, but in the eighth it reappeared in much the same form, in the person of George the Third. The latter, in other words, reverted to the insanity of William, of Lunenburg. M. Lucas illustrates the same tendency by the story of a family in which the insanity of the father skipped the sons and reappeared in the grandsons.

The influence of sex on hereditary transmission has been ably treated by Mr. Sedgwick in the learned papers already quoted. I am indebted to him for many of the following facts, and chiefly for the history of a family in which imbecility was limited to the female line of descent. A mother was subject to recurring attacks of insanity, and died of phthisis at the age of fifty-two. She left a family of three children, consisting of one boy, a very intelligent lad, who, at the age of fifteen years, was busy qualifying himself for professional studies; and two girls, aged respectively eighteen and twelve, who were both imbecile. She had a sister who also was subject to occasional attacks of insanity, but of a more violent form, and three maternal aunts in whose families a like disease prevailed. Aunt No. 1 had three children; the oldest, a girl, was very eccentric and silly; the other two, boy and girl, were intelligent. Aunt No. 2 had four children; two sons, quite intelligent, and two daughters, one living and eccentric, the other in a lunatic asylum. Aunt No. 3 had two children; a son, an intelligent schoolmaster, and a daughter, whose mind was sound concerning all matters save religion, on which she became quite fanatical.

There appears to be a curious class of cases in which both the development and transmission of mental disease are influenced by sex, each parent taking a distinct share in the process, one in causing, the other in passing it on. For example, the insanity may be due to the male, but its transmission becomes, as it were, a function of the female. And in some of these instances each alternate generation is the medium chosen for this act of transmission. Thus, Mr. Sedgwick records an

example showing the second and fourth generations to be free from a malady which was fully manifested in the third and fifth.

Another fact worthy of notice is the statement that insanity is more commonly inherited from the mother than from the father. Baillarger declares that insanity on the mother's side is much more to be feared than on the father's, "not only because it is more often hereditary, but also because it is transmitted to a greater number of children." His researches show also that, from whichever sex derived, insanity in the offspring is more prone to keep to that same sex. Of 346 children who had inherited the disease from the mother, 197 were girls and 149 boys. Of 215 children who had inherited the disease from the father, there were 128 boys and 87 girls. In some families insanity is transmitted in the male line only. Louis XI. of France, whose peculiarities Sir Walter Scott sketched so admirably in "Quentin Durward," inherited his madness from his paternal great-grandfather, through his grandfather Charles VI., and father Charles VII., who, through a morbid fear of poison, starved himself to death.

Moreau observes that personal resemblance and cerebral disorder are never inherited from the same parent. When the child resembled its parent of the opposite sex, the following were the results obtained: "47 sons resembling the father derived their insanity from the mother, and 8 girls who resembled their mother derived their insanity from the father."

Some very appalling illustrations are recorded of the strong tendency among the male members of families to inherit suicidal insanity. Dr. Burrows gives a case thus transmitted through three generations. A grandfather hanged himself, leaving four sons, one of whom died the same death; the second cut his throat; the third, after some months of insanity, drowned himself; the fourth alone died a natural death, though he, too, was insane. The following examples, recorded by Falret, are equally striking. A dyer, of a taciturn and morose disposition, married a woman in good health, by whom he had five sons and one daughter. The eldest son married

and had a family. After many fruitless attempts at suicide, he finally jumped from a window and was killed. The second son, also married, strangled himself at the age of thirty-five. The third, in an insane attempt to fly, threw himself from a window into the garden, and was severely injured. The fourth tried to shoot himself. The fifth, though not a suicide, was melancholic, and therefore dangerous to self. The sister married, and never showed the least tendency to insanity or suicide. The second example is that of a man whose brother committed suicide in Paris. On viewing the corpse, he broke out into the following confession: "What fatality! My father and uncle committed suicide; my brother now imitates them, and, as for myself, twenty times since I started to come here, I have been strongly tempted to throw myself into the Seine."

The same tendency may be hereditary in the females of a family, though it is not, I believe, met with as frequently as among the males. Illustrations could be given, however, if necessary, showing that grandmother, daughter, and granddaughter were affected with suicidal madness.

The last modifying cause I shall notice is age. Many observers have affirmed that insanity is often developed in the offspring at about the same age as it appeared in the parent. In his work on "Mental Maladies," Esquirol mentions the case of a lady who became insane at the age of twenty-five, after her accouchement. A daughter was similarly affected at the same age, and under like circumstances.

We are so accustomed to regard mind as not only a distinct object, but one having a sphere and laws* peculiarly its own and wholly independent of those of matter, that it is difficult to understand, at first, how a derangement of a substance

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* We speak ordinarily of the *laws of mind*, meaning the modes of action of mental phenomena and their relations. "All states of mind are immediately caused by other states of mind, or by states of body. When a state of mind is produced by a state of mind, I call the law concerned in the case a law of mind. When a state of mind is produced directly by a state of body, the law is a law of body, and belongs to physical science" (Mills' "System of Logic," ch. IV., "Of the Laws of Mind," p. 530, Amer. Edition, 1867). The distinction here pointed out should be kept steadily in mind.

so abstract and impalpable can be transmitted, like a bodily deformity, from generation to generation. The truth is, the same principle underlies both phenomena. Whether mind is or is not a pure manifestation of the matter of the vesicular neurine, it at least depends upon it in a very intimate, and, so far as we can tell, necessary way for its power of action, just as the locomotive depends upon steam for its power of movement. It will follow, therefore, that if the bodily organ be altered, by whatever cause, that which is built upon it must accommodate itself to the change. Now, there can be no doubt that the tendency so common among offspring to repeat ancestral characteristics — that tendency which we called *atavism* a little while ago—is due to a transmitted modification of *physical* structure. This is a sound hypothesis, and without it we should be quite unable to understand, not only inherited physiological and pathological characteristics, but even so familiar a phenomenon of animated nature as the instinct of animals. How is it that the experience of one generation of birds, for instance, becomes the possession of the next, without any of that experimenting, so to speak, by which the former had acquired its share? Clearly by transmission to the progeny of a modified nervous organism,—modified by the shock of its own peculiar experiences. And so it is with the hereditary disposition to disease, whatever form the latter may assume, whether of some bodily ailment, as gout or consumption, or of some mixed bodily and mental trouble such as we find in insanity and the hereditary propensity to crime. For, that there is a large and growing class among whom a propensity to crime is transmitted from parent to child is becoming a well-recognized, as it is certainly a most important, fact in social science.* Shall we say, therefore, that the hab-

* "The following is the average result of statistics gathered by different persons miscellaneously on a given day among the prisoners of a single establishment: Forty-four per cent. inherited from their ancestry within three generations whatever impulse springs from intemperance, gross ignorance, licentiousness, epilepsy, pauperism—all these; twenty per cent. inherit from intemperance, ignorance, and epilepsy; fourteen per cent. inherit intemperance and extreme irritability, amounting almost to *insanity;* twelve per

itual criminal is incorrigible, that his case is hopeless because he is the bondman of hereditary taint? By no means. As inherited instinct does not bound the whole mental powers of animals, neither does the hereditary propensity to defectiveness of moral character bound the intellectual and moral capacities of a man. Beyond the limits of this inherited modification stretches a wide, uncultivated tract of character, often capable of yielding a fruitful harvest when the laborers are skillful and industrious. It is in this field that the most signal triumphs of social science are to be won.

Mr. Leckey, in his "History of European Morals," says: "We know much of the ways in which political, social or intellectual causes act upon character, but scarcely anything of the laws that govern innate disposition, of the reasons and extent of the natural moral diversities of individuals and races,"—an observation to a very considerable extent correct. Still, whoever will take the trouble to examine the copious literature of *hérédité*, as a cause influencing nervous temperament, or "innate disposition," must feel constrained to acknowledge the progress made during the last score or two of years in the solution of this and some of the many other mysteries which surround the manifestations of mind. It is certainly true that most of the deepest problems, both in healthy and morbid physio-psychology, remain as inscrutable as ever. There is a something wanting to close the circuit between physical and mental operations. Who can give us the central and sufficient reason why puberty works a metamorphosis in the whole character of the individual not less wonderful than the emergence of the butterfly in full beauty from the chrysalis state; or why epidemics of crime, the excitements of religious revivals, and various other moral frenzies, sweep over districts, leaving the mental prostration of hundreds to

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cent. intemperance and pauperism; while only four per cent. spring from healthy stock and favorable early influences. It is further shown that twenty-eight per cent. of these prisoners thus examined have (or had) relations who are criminals."—(Z. R. Brockway, in "Transactions of the International Penitentiary Congress, held in London, July, 1872." Longman, Green & Co.)

mark their paths. These are but a few specimens of the numerous problems which moral pathology will have to face, and may, I hope, one day conquer; and I heartily agree with Mr. Leckey where he says: "He who raises moral pathology to a science, expanding, systematizing, and applying many fragmentary observations that have been already made, will probably take a place among the master-intellects of the world." As a step toward the accomplishment of this necessary, though arduous task, science has, at various times, forced the world to reject certain obstructive theories respecting the nature of insanity and the claims of the insane. Lunatics are no longer condemned to the stake as possessed of the devil. They are not now forced to submit to cruel and restrictive treatment as in the days when Pinel commenced his great reform. A searching scrutiny into the occult causes of morbid nervous action has issued in a more rational pathology, and in a treatment of lunatics in accordance with the dictates of reason and humanity. The scientific spirit will not stop here, for it has still an important work to accomplish. It must develop the full bearing on responsibility of such facts as have occupied much of our attention this evening. When this is done, society will recognize that its treatment of habitual criminals, far from being grounded on wise and permanent principles, is merely tentative and wholly barren of good results. Allow me to observe, in reference to the general question of the treatment of our criminal classes, that though crime be odious beyond comparison, the criminal is not properly disposed of when the anathema of society has cast him out like a hopeless reprobate, into exterior darkness. And, if society could intelligently place itself in the position of the member who habitually violates one or more of the laws framed for its integrity, and could experience all the details of the process by which he was conducted to his fall, much more wisdom would be displayed in his regard. Not that I have any sympathy whatever with the sentimental treatment of criminals so fashionable at the present day. Punishment should be meted out to them, swift, stern, and proportionate to their crimes, but not a punishment of revenge. It should

be made the agent—the guide, as it were,—to lead them through a radical change in their natures into a higher and purer mode of life. For, truly,

> "There is some soul of goodness in things evil,
> Would men observingly distil it out."

The liberty they so greatly abuse ought, indeed, to be taken from them, but it should be held as a trust to be restored when, and only when, by their conduct, they afford ample and continued proofs of realizing its legitimate uses. To the question, how they can be brought to this, I answer, by education in its broad and comprehensive sense. By this agency, wisely conducted, a persevering attempt should be made to oblige them to cast off the old, and put on the new man. "Upright creatures may want to be improved," says the admirable Bishop Butler, "depraved creatures want to be renewed. Education and discipline, which may be in all degrees and sorts of gentleness and of severity, are expedient for those; but must be absolutely necessary for these. For these, discipline of the severer sort too, and in the higher degrees of it, must be necessary, in order to wear out vicious habits; to recover their primitive strength of self-government, which indulgence must have weakened; to repair, as well as raise into a habit, the moral principles, in order to their arriving at a secure state of virtuous happiness." *

To this end, then, all who take an interest in our great social problem should labor. It should be their aim to have introduced into our prisons and reformatories a provident treatment of delinquents, a sound system of intellectual and religious training, as well as of moral discipline, by which virtuous principles and a high ethical ideal will be made to replace their depraved feelings and debased moral standard.

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* "The Analogy of Religion," pp. 153, 154. Bell & Daldy, London, 1868. It is a remarkable proof of the sagacity of this great man that, although he wrote one hundred and thirty years ago, his ideas upon this and cognate problems are fully abreast of the most advanced views of the present day. No publication with which I am acquainted can approach his fifteen sermons on "Human Nature" in point of philosophical insight into the practical workings of the human mind.

THE LAW IN REFERENCE

TO THE

SALE OF POISONS BY DRUGGISTS.

BY FRANCIS TILLOU, ESQ., COUNSELLOR-AT-LAW.*

THE sale of poison by druggists is regulated in the State of New York by statute.

By the Revised Statutes, vol. 2, page 649, sec. 23, it is enacted that "Every apothecary, druggist, or other person who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid usually denominated poisonous, without having the word 'poison' written or printed upon a label attached to the phial, box or parcel in which the same is sold, or who shall sell or deliver any tartar emetic without having the true name thereof written or printed upon a label attached to the phial, box, or parcel containing the same, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars."

By an act to regulate the sale of poisons, chapter 442 of the laws of 1860, passed April 16, 1860, it was enacted by the first section of said act, that no person should sell or give any poison or poisonous substance, without recording in a book to be kept for that purpose, the name of the person receiving said poison, his or her residence (together with the name and residence of some person as witness to such sale), excepting

* Read before the Society, January 13, 1870.

upon the written order or prescription of some regularly authorized practising physician, whose name must be attached to such order. Such book shall be kept open for inspection."

But by an act passed 1862, chap. 273 of the session laws of 1862, the above first section of the act of 1860 was amended by leaving out the requisition for the name of a witness to the sale.

By the second section of the act of 1860, it is further enacted that no person shall sell, give, or dispose of any poison or poisonous substance, except upon the order or prescription of a regularly authorized practising physician, without attaching to the phial, box, or parcel containing such poisonous substance a label with the name and residence of such person and the word "poison" all printed upon it with *red ink*, together with the name of such poison written or printed thereon in plain and legible characters.

By the third section of the act of 1860 it was further enacted, "That the above provisions should apply to the following poisonous substances, excepting when sold in wholesale quantities of one pound or over, viz., arsenic and its various preparations, oxalic acid, corrosive sublimate, chloroform, sugar of lead, tartar emetic, opium and its preparations, oil of bitter almonds, cyanurets of potassium, mercury, silver, and zinc, deadly nightshade, henbane, poison hemlock, prussic acid, aconite and its various preparations, atropia and its salts, cantharides, croton oil, daturia and its salts, delphinea and its salts, digitalis and its preparations, nux vomica and its preparations, elaterium, ergot and its preparations, veratria and its salts, cannabis and its preparations."

But by the amendatory act of 1862 this third section of the act of 1860 was repealed.

By the fourth section of said act of 1860, it is enacted that any person infringing any of the provisions of said act shall, upon conviction, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars.

By the fifth section of said act of 1860, it is further enacted that said act shall *only* apply to incorporated cities and villages having a population of one thousand inhabitants and upwards in this State.

By chapter 478 of the laws of 1869, an act regulating the preparation of medical prescriptions was passed May 1, 1869.

By the first section of this act of 1869, it is enacted that no person employed or in attendance at any drug store or apothecary shop shall prepare a medical prescription, unless he has served two years' apprenticeship in a drug store, or is a graduate of a medical college or a college of pharmacy, except under the direct supervision of some person possessing some one of the before-mentioned qualifications; nor shall any one having permanent charge as proprietor or otherwise of any store at which drugs are sold by retail, or at which medical prescriptions are put up for sale or use, permit the putting up or preparation thereof therein by any person, unless such person has served two years as apprentice in a retail drug store, or is a graduate of a medical college or a college of pharmacy.

And by the second section of the same act it is provided that any person violating the provisions of said act shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not to exceed six months in the county jail; and in case of death ensuing from such violation, the person offending shall be deemed guilty of a felony, and be punished by a fine not less than one thousand dollars, nor more than five thousand dollars, or by imprisonment in State prison for a term of not less than two years, nor more than four years, or by both fine and imprisonment, in the discretion of the court.

By statute every man who by his culpable negligence causes the death of another, although without any intent to kill, is guilty of manslaughter. (2 R. S., 662, sec. 19.)

The foregoing seem to be all the existing statutory provisions on the subject.

A druggist who negligently sells a poison, labelled as a harmless drug, and thereby causes the death of a person to whom it is administered, is guilty of manslaughter.

So highly does the law value human life that it admits of no justification wherever life has been lost, and the carelessness or negligence of one person has contributed to the death of another.

And this rule applies not only when the death of one is occasioned by the negligent act of another, but where it is caused by the negligent omission of a duty to that other.

Besides the penalties imposed by statute, there is also a common law liability of the druggist for damages sustained by his negligence.

All persons who deal with deadly poisons are held to a strict accountability for their use.

The highest degree of care known amongst practical men must be used to prevent injury from the use of such poisons.

And one who sells poisons labelled as an innocent drug is liable in damages to any person injured thereby, no matter through how many hands it may have passed.

A druggist is undoubtedly held to a special degree of responsibility for the erroneous use of poisons, corresponding with his superior knowledge of the business.

Affixing a false label to a poison, and sending it into market in that condition, so as thereby to mislead others and endanger human life, is an unlawful act, for which the party guilty of the act is responsible, whether he did it wilfully or negligently, and to entitle the aggrieved party to his action in such case no privity is necessary except such as is created by the unlawful act and consequential injury. Privity of contract in such case is out of the question. For a duty violated by a druggist giving a false label is a duty not created by contract, but by law, every one being under an obligation to abstain from acts tending naturally and probably to endanger human life.

The injury is not rendered too remote to sustain a recovery because separated from the unlawful act by intervening events, however numerous or of whatever kind, provided they are the natural and probable consequences of the act.

And when the unlawful act is in its nature likely to produce the events which follow, as, for instance, a patient taking a poison instead of some harmless or different prescription than that intended, by reason of a false label of a druggist, the author of it may be treated as having caused the succeeding events, though they consisted of the acts of third

persons. For the false label is a continuing authority or direction by the druggist for the use of the poison, and he is bound to indemnify against the acts which it was likely to cause when sold in that condition.

The foregoing propositions seem to be fully sustained by the case of Thomas *v.* Winchester, in the Court of Appeals.

That was an action brought to recover damages for negligently putting up, labelling, and selling as and for the "Extract of Dandelion" a jar of the "Extract of Belladonna," by means of which the plaintiff's wife, Mrs. Thomas, being sick, a dose of dandelion was prescribed by a physician, and a portion of the contents of the jar of belladonna was administered as and for the extract of dandelion, etc.

The facts of the case, briefly, were as follows :—

The defendant, Winchester, was engaged at 108 John street, New York, in the manufacture and sale of certain vegetable extracts for medicinal purposes, and in the purchase and sale of others.

The extracts manufactured by him were put up in jars for sale, and those he purchased were put up by him in like manner.

The jars containing extracts manufactured by himself, and those containing extracts purchased by him from others, were labelled alike—both were labelled as "prepared by A. Gilbert," a person in the employ of defendant.

The jar in question was labelled "$\frac{1}{2}$ *lb. Dandelion ; prepared by A. Gilbert, No.* 108 *John st., N. Y.;*" and in fact contained belladonna, and not dandelion.

The jar was sold by defendant to a wholesale druggist in New York, as and for the extract of dandelion. Dr. Foord, a physician and druggist at Cazenovia, Madison county, N. Y., purchased the article from the New York druggist, as and for the extract of dandelion.

Mrs. Thomas being ill, her physician prescribed a dose of dandelion. Her husband purchased what was believed to be the medicine prescribed at the store of Dr. Foord. The medicine was taken from the jar in question and administered to Mrs. Thomas, who was thereby made dangerously ill, and the

action was brought against Winchester and Gilbert to recover damages.

It appeared that the extract in the jar in question was not manufactured by defendant himself, but was purchased by him from another manufacturer or dealer, but labelled with Gilbert's labels, which labels were paid for by Winchester, and used in his business with his knowledge and assent.

It was objected, among other questions, that the action could not be sustained, as the defendant was the remote vendor of the article in question, and there was no connection, transaction, or privity between defendant and the plaintiff.

A verdict was rendered against the defendant Winchester; the defendant Gilbert being acquitted by the direction of the Court.

The defendant Winchester appealed to Court of Appeals, and it was there held that a dealer in drugs and medicines, who carelessly labels a deadly poison as a harmless medicine, and sends it so labelled into market, is liable *to all persons* who, without fault on their part, are injured by using it as such medicine in consequence of the false label. That the liability of the dealer, in such case, arises not out of any contract or direct privity between him and the person injured, but out of the duty which the law imposes upon him to avoid acts in their nature dangerous to the lives of others. He is liable, therefore, though the poisonous drug with such label may have passed through many intermediate sales before it reaches the hands of the person injured. That where such negligent act is done by an agent, the principal is liable for the injury caused thereby.

Although the defendant Gilbert was acquitted by the jury under direction of the Court, and judgment rendered against the defendant Winchester alone for damages, Judge Ruggles, in delivering the opinion of the Court of Appeals, said that "Gilbert, the defendant's agent, would have been punishable for manslaughter, if Mrs. Thomas had died in consequence of taking the falsely labelled medicine." (2 R. S. 662, sec. 17; Tessymond's Case; 1 Lewin's Crown Cases, 169; Regina *v.* Swindall; 2 Car. & Ker., 232.)

"Although the defendant Winchester may not be answerable criminally for the negligence of his agent, there can be no doubt of his liability in a civil action, in which the act of the agent is to be regarded as the act of the principal."

See the case fully reported in 6 New York (2 Selden) Reports, page 397, and the numerous authorities there cited and referred to.

The law regulating the sale of poison by druggists might be amended in this respect :—

Druggists should be required, in addition to the label of poison and the name of the poison, to name also the antidote to such poison, and give brief directions for administering the antidote. This should be printed or written plainly and legibly, so that in cases of poison being taken by accident or design, an antidote could be quickly administered without the delay of getting a physician; and no doubt many lives could thereby be saved.

The law of 1860 seems to be defective in limiting its application to incorporated cities and villages having a population of one thousand inhabitants and upwards.

It might with advantage be made general in its application throughout the State.

A MEDICO-LEGAL STUDY

OF THE CASE OF

DANIEL McFARLAND.

By WILLIAM A. HAMMOND, M.D.*

I. The mind of man may be defined as a force developed by nervous action, and is appropriately divisible into four distinct parts: the perception, the intellect, the emotions, and the will. Either one of them may be exercised independently of the other, though they are very intimately connected, and in all continuous mental processes are more or less brought into relative and consecutive action: 1. Thus we see an object, hear a sound, taste a flavor, smell an odor, or touch a substance, and perception is exercised. 2. We form an idea of the material which has been brought to our knowledge through the medium of our senses, and the intellect acts. 3. We are moved to pleasure, disgust, affection, or some other emotion by the information obtained, and the judgment formed; and

* This paper is republished from the *Psychological Journal* for July, 1870, at the request of many medical and legal friends. It was read before the Medico-Legal Society of the city of New York, on the evening of May 12th, and was honored by a special vote of commendation. That the principles which it enunciates are true, will scarcely, I think, be questioned by those whose knowledge of psychological medicine gives any value to their opinions; that those principles are applicable to the chief actor in the tragedy, will not, I imagine, be doubted by those whose judgments are not warped by a prejudice more powerful even than ignorance.

4. We act in accordance therewith, and thus bring the will into operation.

II. Individuals of well-balanced minds, and under ordinary circumstances, do not act either from mere sensorial impressions or in accordance with their emotions, but from the ideas which their intellect presents to them, *i. e.*, after due reflection. Others, however, less happily constituted, and all of us in times of excitement and emergency, under the influence of certain drugs, or while suffering from bodily disease, are guided to a great extent by the senses or the emotions alone, and thus either bring the intellect into feeble action, or are not influenced by it at all.

III. Again, the intellect may be intensely preoccupied by some engrossing subject, an impression is made upon the senses, and an act is performed in accordance with the perception, but without even the knowledge of the intellect. Individuals thus circumstanced are said to be "absent-minded."

IV. On the other hand, the senses may become so highly abstracted that both the intellect and the will are paralyzed: 1. Thus a frightful object or event is said to "freeze with horror." 2. The hand coming suddenly and unexpectedly in contact with a cold, dead human body has excited the emotion of fear to such an extent as to induce permanent insanity. 3. A sound such as that of burglars breaking into a house has been known to cause complete mental and physical paralysis for several hours. 4. In these and in many similar instances which are familiar to all, the cause excites only the perception and the emotions, and in some cases touches the first only. The will, in persons normally constituted and in good health, never acts unless set in motion either by the perception, the emotions, or the intellect, and then the resultant action is a logical and direct consequence of the sensorial, intellectual, or emotional factor.

V. Now, in individuals of well-formed brains, which are free from structural changes, and nourished with a due supply—neither excessive nor deficient—of healthy blood, the perception, the intellect, the emotions, and the will, act in a manner common to mankind in general: 1. Slight changes in the forma-

tion or nutrition of the brain induce corresponding changes in the several parts of the mind, or in it as a whole. As no two brains are precisely alike, so no two persons are precisely alike in their mental processes. 2. So long, however, as the deviations are not directly at variance with the average human mind, the individual is sane. If they are at variance, he is insane.

VI. But within the limits of mental health marked irregularities are met with in the different parts of the mind: 1. Thus some persons are noted for never perceiving things exactly as they are. 2. Others have the emotional system inordinately or deficiently developed. 3. Others are weak in judgment, defective in memory, feeble in powers of application, or vacillating in their opinions. 4. Others, again, are lacking in volitional power, and the ability to perform certain acts, to refrain from others, or to follow a definite course of action which the intellect tells them is expedient and wise. (*a.*) Such persons are "eccentric," and the emotions which influence them most powerfully are those which react upon themselves — vanity, pride, the love of approbation or of notoriety, etc. (*b.*) They stand upon the verge of insanity with a decided predisposition to mental disease, and ordinarily do not pass the limit merely for want of a sufficient exciting cause.

VII. Others are naturally so constituted, or through the operation of morbid causes are so changed, that the several parts of their minds, as a whole or separately, are exercised in an abnormal manner: 1. Thus the perception may be deranged to such an extent as to render them continually the victims of erroneous sensorial impressions. 2. These, when produced by the false interpretation of real objects, are called illusions, and when originating internally, and having no real basis, hallucinations. Illusions are eccentric, hallucinations centric. The latter are, therefore, of more serious importance. 3. An individual who has such derangements of his sensorial processes is suffering from the primary form of mental aberration—perceptional insanity.

VIII. Thus far there is no error of intellect: 1. He recog-

nizes the fact that his senses convey false impressions to the higher parts of the brain, or that these latter are so disordered as to act from within upon the sensorial organs, and he is not deceived, except, perhaps, for the instant. 2. We all at times momentarily have illusions and hallucinations, but the judgment at once prevents continued deception. 3. When this fails to be the case, delusions exist, and we are the subjects of intellectual insanity.

(*a.*) Thus a person has a sensation of a fly or an ant crawling over his skin. He applies his finger to the spot, and ascertains that he has a false sensation, an illusion, or an hallucination. This is probably the end of it. (*b.*) But if he should happen to imbibe from these erroneous impressions the idea that a fly or an ant really *was* on his skin, and should persist in this opinion against all reason, he would have a delusion, and would be intellectually insane. (*c.*) To what point this delusion might carry him no one could predict. It might, and in a perfectly logical manner, prompt him to steal, commit arson, murder his dearest friend or his worst enemy, or make a will, leaving all his property away from his natural heirs. Delusions are the essential feature of intellectual insanity, but of no other uncomplicated form of mental derangement. They are not, therefore, a scientific test of insanity in general.

IX. Insane actions are often the direct consequences of delusions: 1. The will, when the organism is in a normal condition, acts in obedience to the intellect, to the ideas which the healthy brain elaborates. 2. Persons intellectually insane follow the same law, and do those things to which their delusions logically lead them. A delusion being a false conception of the intellect which is accepted as true, it exercises the same power over the will as a true belief. 3. A man, therefore, who imagines he hears the voice of God commanding him to kill his wife or his children, obeys with as much unquestioning faith in the reality of the impression made upon his auditory nerves as Abraham had when he received the divine command to sacrifice his only son. 4. Neither is the "knowledge of right and wrong" a test of the mental condi-

tion of an individual except to a very limited extent. The faculty in question is not inherent, but is the result of education; and what is right with one race, or nation, or community, is wrong with another, and *vice versa;* so that persons of perfectly normal mental organization might be incapable of making the distinction according to our ideas. We all, at times, feel that those only are right whose views are in accordance with our own, and it is, therefore, most unwise to set up so arbitrary a standard as a test of the integrity of an individual's mind.

X. On the other hand, insane persons are often perfectly able to discriminate between acts which may be right or wrong, according to their ordinary normal standard. A person manifestly insane will reason logically in regard to conduct which he knows has been contrary to law, and at variance with the principles instilled into him from childhood, but which he was not able to control or prevent.

XI. The emotions are at all times difficult to control, but they may acquire such undue prominence as to dominate over the intellect and the will, and assume the entire mastery of the actions in one or more respects: 1. The love of a father for his offspring is one of the most powerful of all the emotions, and under certain circumstances may be developed into a passion, or even an insane impulse. 2. As an example of the former, take the case of a father who saw his child in a burning house, entirely surrounded by flames, and cut off from all chance of escape. Without stopping to reflect on the futility of the action, or on the certainty that his own life would be sacrificed, he rushed into the midst of the fire and smoke in the vain attempt to save the being so dear to him, and perished before half the space was traversed. (*a.*) In such a case a moment's exercise of the reasoning faculties would have been sufficient to show the hopelessness of the effort. (*b.*) But the emotion of paternal love was all-powerful; there was no intellect, no will, and the act was, therefore, one done in the "heat of passion," and as such differing only in unessential particulars from others which the law regards as criminal.

XII. The emotions are also subject to insane exaggeration through the influence of motives which act slowly, but with constantly-increasing force: 1. Thus, a mother is affected with emotional insanity from the fact that her son or daughter has become depraved or criminal. 2. She struggles against the consciousness that her hopes are blasted; but at last the intellect and the will yield, a settled melancholy predominates in all her thoughts, and she commits suicide, unable longer to bear up in the unequal conflict. 3. Here there is no delusion, no error of judgment, but simply an inability to apply her reasoning powers to the consideration of the subject, or to exercise her will against the overpowering emotion which renders her life a burden.

XIII. Again, there may be no motive whatever discoverable on the most minute examination: 1. To be sorrowful when we have met with a great misfortune, to rejoice when we have cause for gladness, to be jealous when there is reason, to be afraid when there is occasion for fear, are emotional actions which are common to mankind when in a state of complete health. 2. Some persons, however, are able to exercise a greater degree of control over the manifestations of their emotions than others, who yield to very slight disturbances in the routine current of their lives.

XIV. Many examples of apparently causeless emotional insanity are met with in the practice of physicians who devote themselves to the study of mental diseases: 1. A few days ago I was consulted in the case of a lady who had become morbidly depressed without evident cause. For several hours every day she sat weeping and wringing her hands. She could give no reason for the intense melancholy which affected her, and to escape from which she was ready to destroy herself. 2. Of course, in cases such as this there is a cause, but it is not primarily mental, or even emotional. It is to be found in the functional derangement of some one of the bodily organs, capable, by sympathetic action, of influencing the operations of the nervous system, or else is located in some part of the nervous system itself. 3. A gentleman occupying a prominent public position is now under my charge, suffering

with profound melancholy, for which he can allege no cause. "The community," he said to me, "regards me as one of the most favored of men in every respect. I am wealthy, my children have turned out well, I have succeeded in all my undertakings, I have no source of anxiety or grief; and yet I am only restrained from committing suicide by the consciousness that reproach would fall upon my family. I exaggerate the petty trifles of life to momentous troubles; the conduct of my friends is misinterpreted; little slights are magnified into gross insults or serious wrongs; and yet I am inwardly conscious that no one commands a higher degree of respect than myself, or has a greater right to be happy." (*a.*) Here another emotion, that of family pride, is stronger for the present than those which depress him, and consequently it acts upon his will, and restrains him from committing suicide or other criminal act; (*b.*) but in an instant the balance may be reversed, and the slumbering embers kindled into flame by a scarcely perceptible spark. A dose of opium, an undigested meal, an attack of constipation, a little irregularity in the action of the liver, a sleepless night, or a real cause for mental anxiety, might result in the loss of the control he now has, and force him to commit a deadly injury to himself or others. (*c.*) How much greater would be his danger if, instead of a faithful wife, devoted children, and a placid existence, the last few years of his life had witnessed the wreck of all his domestic joys, the rise of enemies, and the success of the harassing measures they had undertaken against him!

XV. The emotions are also frequently secondarily deranged through the morbid operations of the intellect: 1. A person, for instance, imbibes the delusion that he has committed the unpardonable sin, or that God has deserted him, and in consequence passes into a condition of settled melancholy, during which he may attempt self-destruction to escape from his harrowing thoughts, or commit a homicide in order that the same end may be accomplished by his being hanged for murder. 2. Other emotions may, of course, be excited into morbid activity by derangement of the intellect. Delusional jealousy, anger, hatred, or love may thus urge their unfortunate victim

to the perpetration of crime, plunge him into a depth of unhappiness from which there is no escape, or lift him to an ecstasy of bliss far exceeding that derivable from the realization of all his wishes.

XVI. The brain may be so disordered that insanity is manifested only as regards the will: 1. There are no false conceptions of the intellect, and no emotional disturbance, but solely an inability to exert the full will power either affirmatively or negatively. 2. Many instances of "morbid impulse" are uncomplicated cases of volitional insanity, in which an idea, suddenly flashing across the mind, is immediately carried out by the individual, although his intellect and his emotions are strongly exerted against it. (*a.*) Thus, a person who previously has not exhibited any very obvious symptoms of mental derangement—though careful inquiry will invariably show that slight evidences of cerebral disease have been present for some days—instantaneously feels a morbid impulse to commit a murder, or perpetrate some other criminal act. (*b.*) The many species of what is sometimes called "moral insanity," may properly be classed together under the head of volitional insanity; of such are kleptomania, dipsomania, pyromania, etc. The subject of volitional insanity will be more fully considered in a subsequent part of this paper.

XVII. Hence the mind may be disordered as regards the perception, the intellect, the emotions, and the will, separately, and to this partial derangement the term "monomania" is often applied: 1. It may also be unsettled by the simultaneous perversion of two or more of these parts from the normal standard, and this state is frequently designated mania. 2. In general mania, the patient is insane in his perceptions, *i. e.*, he has illusions and hallucinations; in his intellect, *i. e.*, he has delusions, and is disordered in the faculties of judgment, memory, etc.; in his emotions, which become exaggerated or uncontrollable; and in his will, by which he is rendered incapable of self-control or self-direction.

XVIII. Dementia is that condition in which the mind, originally of normal character, has lost a portion of its power; and idiocy, that in which the mind has always been feeble.

From the foregoing remarks, it will be perceived that I regard insanity as a manifestation of disease of the brain characterized by a general or partial derangement of one or more faculties of the mind, and in which, while consciousness is not abolished, mental freedom is perverted, weakened, or destroyed.

XIX. An essential feature of the definition here given of insanity is, that it depends directly upon a diseased condition of the brain: 1. This is the immediate cause, and may consist of structural changes due to injury, disease, or malformation, or of mal-nutrition, the result of excessive intellectual exertion, the action of powerful emotions, irritations in distant parts of the body, the sudden stoppage of the digestive process, the introduction into the system of certain drugs, such as opium, alcohol, belladonna, etc., the retention in the organism of substances poisonous in character, but which in health are excreted, and of other factors capable of altering the quantity or quality of the blood circulating through the cerebral vessels, or of accelerating or retarding the metamorphosis of tissue which the brain undergoes in common with all the other organs of the body. With this general view of the subject of insanity as I understand it, I pass to the consideration of points more intimately connected with the case under consideration.

XX. I have stated, incidentally, that there is a form of insanity, which, in its culminating act, is extremely temporary in its character, and which, in all its manifestations, from beginning to end, is of short duration: 1. This species of mental aberration is well known to all physicians and medical jurists who have studied the subject of insanity. (*a.*) By authors it has been variously designated as transitory mania, ephemeral mania, temporary insanity, and morbid impulse. (*b.*) It may be exhibited in the perceptional, intellectual, emotional, or volitional form, or as general mania. 2. The exciting causes of temporary insanity are numerous. (*a.*) It may be induced by bad hygienic influences, such as improper food, exposure to intense heat, cold, or dampness, or to a noxious atmosphere; by excessive physical exercise, by disease of the

heart, by blows upon the head or other parts of the body, by certain general and local diseases, by the abuse of alcoholic liquors, by the ingestion of certain drugs, such as opium, belladonna, and hashish, by excessive intellectual occupation, by loss of sleep, and, above all, by great emotional disturbances. (*b.*) Among these latter are religious excitement, grief, disappointed affection, and especially anxiety, by which the mind is kept continually on the stretch, tortured by apprehensions, doubts, and uncertainties, and by which it is worn away more surely than by the most terrible realities. 3. The predisposing causes are to be found in the individual as an inherent part of his organization. (*a.*) They consist in an hereditary tendency to insanity, or to some other profound affection of the nervous system; (*b.*) or the possession of an excitable, nervous temperament, which is incapable of resisting those morbid influences which persons of phlegmatic disposition would easily withstand. (*c.*) Thus, all men are not affected alike by disturbing causes, because all men are not cast in the same physical or mental mould; a circumstance which will produce insanity in one person will scarcely ruffle the equanimity of another. 4. The immediate cause of temporary insanity is the disease itself, of which the mental aberration is simply the manifestation. It may consist of—(*a.*) A condition of cerebral exhaustion, in which, owing to excessive wear and tear of the brain, new substance is not formed with sufficient rapidity to take the place of that used. (*b.*) The circulation through the brain of blood which is not normal in quality. (*c.*) Cerebral congestion.

5. The first of these is more particularly the existing condition in those cases of temporary insanity which result from the excessive use of the brain and in which loss of sleep is a characteristic feature. (*a.*) Sleep is the period during which the brain rests and is recuperated; but if the sleep be insufficient, and the brain is kept in a state of activity when it should be in repose, not only is its nutrition prevented, but it is still further exhausted by the demands made upon its substance. (*b.*) For, every sensation which it perceives, every emotion which it experiences, every thought which it elaborates, every

volitional act which it performs, is the result of the destruction of the cerebral tissue: now, in healthy sleep the blood-vessels of the brain are comparatively empty; when they are overloaded, sleep is impossible. (*c.*) The existence of wakefulness not only indicates a morbid activity of the brain, but it is a positive sign of cerebral hyperæmia or congestion, which condition is intimately related to the one now under consideration.

6. The second condition—the circulation through the brain of blood of morbid quality is very often the disease which gives rise to temporary insanity. (*a.*) The retention in this fluid of the elements of the bile or urine vitiates its quality to such an extent as to interfere with the normal functions of the brain, and sometimes to cause temporary insanity. (*b.*) A similar state, though of course induced by different substances, is caused by the ingestion of alcohol, opium, belladonna, and other drugs. (*c.*) The temporary insanity, however, which is brought about by any poisonous material, animal or vegetable, contained in the blood, presents peculiar features according to the character of the toxic substance, which are easily recognizable by the experienced physician.

(*d.*) The blood may be poisoned by the influence of certain emotions, and thus rendered unfit for the use of the brain. In regard to this point, Descuret * says:

"It is more than probable that the blood likewise experiences through the effect of the passions alterations of which chemistry will hereafter perhaps be able to ascertain the nature."

7. We know, too, that a violent emotion will so interfere with the action of certain excretory organs as to arrest their functional activity, and thus cause the effete and poisonous substances, which it is their office to eliminate, to be retained in the blood. (*a.*) Excessive passion has also been known so to alter the constitution of the mother's milk as to render it a deadly poison to the infant at her breast. (*b.*) Offspring

* La Médecine des Passions, ou les Passions considérées dans leurs rapports avec les Maladies, etc. Paris, 1860. Tome i., p. 175.

begotten by a father who is suffering from harassing emotion are born idiotic or with a marked proclivity to diseases of the nervous system; fear or sorrow will even in a single night blanch the hair; the sweat of persons under the influence of strong passions acquires a peculiar odor; and the saliva of an angry man is sometimes as poisonous as that of a rabid dog. (*c.*) All these changes must take place through the medium of the nervous system, and the blood, whereby the latter undergoes some radical change. (*d.*) There is every probability that the sudden outbursts of mania during or immediately after great emotional excitement are in part at least the result of morbid alterations in the quality of the blood.

8. The third diseased state which may give rise to temporary insanity is that which is characterized by an increase in the amount of blood contained in the brain. This condition may be induced by causes similar to those which produce mal-nutrition and morbid changes in the constitution of the blood. Some of these, however, require more particular consideration than has yet been given them in this paper.

9. The quantity of blood in the brain is increased by long-continued exercise of the intellectual powers. (*a.*) We are all familiar with this fact in our own persons, from the sensations of heat, fullness, and sometimes pain, we experience after we have overtasked our brains. Several cases of mental derangement, the effects of excessive work imposed upon the brain, have come under my observation, and the influence is well recognized by all alienists. (*b.*) For the full exercise of the cerebral functions blood is necessary in large amount, and it must be frequently renewed. In this respect the brain does not differ from the other bodily organs, but the supply of blood sent to it is greatly in excess of that received by any of them, for the reason that while they have their periods of rest, the brain is active every instant of life; not even sleep affording it entire repose in all its parts. Now, increased action requires an increased amount of blood; the vessels thus become over-distended, they lose thereby their ability to contract, and thus even after the exciting cause is removed they continue dilated. (*c.*) Congestion is thus induced, and

the individual rendered liable at any moment to an attack of mania, or temporary insanity.

(*d.*) Congestion of the brain and temporary insanity may be produced by an overdistended stomach. A case of the kind is now under my care. A gentleman ate hurriedly a hearty meal, and in a short time afterward became furiously maniacal, during which state he had to be forcibly restrained from injuring himself and others.

(*e.*) Alcohol, opium, belladonna, and other drugs, likewise cause cerebral congestion. This fact is so well known that it is scarcely necessary to do more than allude to it. That temporary insanity is produced by them is a fact with which all are familiar.

10. Passing over several other causes of congestion of the brain, we come to one set of factors which are more potent than any other, and these are the emotions. (*a.*) There is a nerve in the body which, from its connections with all the bodily organs, and its manifest office in the economy, is called the sympathetic or emotional nervous system. (*b.*) Through this system the heart beats with augmented force and frequency under the influence of anger or other emotional disturbance; (*c.*) Through it the desire to urinate is felt in anxiety; (*d.*) Through it the action of the liver or kidneys is arrested or perverted in rage or jealousy; (*e.*) Through it the muscles of the face expand in joy, and those of the chest and abdomen contract convulsively in the laughter of mirth; (*f.*) Through it the lachrymal gland is excited to increased activity, and the tears flow down the cheeks in sorrow and anguish: (*g.*) Through it the saliva ceases to be secreted in fear, or is formed in excessive quantity by the emotions excited at the sight of a savory dish; (*h.*) And through it the milk in the mother's breast ceases to be secreted in alarm, anxiety, or grief.

11. But the sympathetic system of nerves has another most important office to perform in the organism, and one which in its relations to the present subject is of very great moment. (*a.*) It is the organ by which the size of the blood-vessels is regulated, and many of the examples cited of its action depend

upon this property. (*b.*) The effect of certain emotions is, however, directly seen in the blushing produced by shame, and the pallor caused by fear. (*c.*) In the one case the vessels dilate, and the blood flows in torrents to the face and heart; in the other they contract, and this fluid cannot enter the more minute ramifications. (*d.*) Emotional disturbance with equal certainty increases or diminishes the amount of blood in the brain. (*e.*) This is shown not only by the vertigo, the heat in the head, the suffusion of the eyes, the throbbing of the carotid and temporal arteries, the rupture of blood-vessels, and the sudden death produced by the one action, and the syncope resulting from the other, but by direct observation of the fundus of the eye with the ophthalmoscope. (*f.*) No fact in medical science is more clearly established than this, of the action of the emotions over the circulation of blood in the brain.

XXI. Now, what is the condition known as transitory mania?

1. It may be defined as a form of insanity in which the individual, with or without the exhibition of previous *notable* symptoms, and with or without *obvious* exciting cause, suddenly loses the control of his will, during which period of non-control he commonly perpetrates a criminal act, and then as suddenly recovers more or less completely his power of volition.

2. Attentive examination will always reveal the existence of symptoms precursory to the outbreak which constitutes the culminating act, though they may be so slight as to escape superficial examination. (*a.*) The hypothesis, therefore, that a person may be perfectly sane one moment, insane the next, and then again perfectly sane in a moment, is contrary to all the experience of psychological medicine.

3. The symptoms indicative of an approaching attack of temporary insanity are chiefly those of cerebral congestion, though it will be found upon thorough examination that other organs besides the brain are more or less deranged in their functions. (*a.*) Thus the appetite is lessened or altogether abolished, the bowels are torpid, the kidneys fail to eliminate

the normal quantity of urine, the heart becomes irregular in its action, and beats with increased frequency—a certain sign of a weak and excited nervous system—and the skin is either bathed in perspiration, or is dry and harsh.

4. The initial symptoms of cerebral congestion can always, even when slight, be detected by a physician accustomed to the study of diseases of the nervous system, and are generally so decided as to be noticeable by the patient, and by persons not familiar with medical science. (*a.*) Among the most prominent, and in its effects the most exhausting, is wakefulness. It indicates beyond all doubt an increased flow of blood to the brain, and in its turn it reacts upon this organ, and still further deranges its normal functions. The effect, therefore, becomes a cause.

5. With the wakefulness there is generally combined great mental and physical irritability. The patient is occupied with the thoughts and emotions which have engaged his attention during the day, and he dwells upon them not only with intensity of thought, but often with the intellect perverted from the mode of action natural to him. (*a.*) He may likewise have illusions, hallucinations, and delusions, and when he does, toward morning, obtain a little sleep, he is disturbed with frightful dreams which prevent his being refreshed.

6. And his condition is such that he is prevented taking the ordinary means of quietly going to bed in order to obtain sleep. His whole nervous system is in such an irritable state that he paces his chamber the greater part of the night, or seeks the open air and walks the streets till, thoroughly exhausted mentally and physically, he succeeds in getting a little inquiet slumber.

7. All writers on subjects connected with psychological medicine have insisted with great force on the influence of insomnia in causing mental aberration. In my work on "Sleep and its Derangements," I have dwelt at length on this point, but no one has done so with more emphasis than Dr. Isaac Ray.* (*a.*) He says, in regard to the injurious effects of wakefulness:

* Mental Hygiene: Boston, 1863, p. 98 *et seq.*

"One of its most common effects is a degree of nervous irritability and peevishness, which even the happiest self-discipline can scarcely control. That buoyancy of the feelings, that cheerful, hopeful, trusting temper, that springs far more from organic conditions than from mature and definite convictions, give way to a spirit of dissatisfaction and dejection; while the even demeanor, the measured activity, are replaced either by a lassitude that renders any exertion painful, or an impatience and restlessness not very conducive to happiness. Upon the intellectual powers the mischief is still more serious. They not only lose that healthy activity which combines and regulates their movements in the happiest manner, but they are no longer capable of efforts once perfectly easy. The conceptions cease to be clear and well defined, the power of endurance is weakened, inward perceptions are confounded with outward impressions, and illusory images obtrude themselves unbidden upon the mind. This kind of disturbance may pass sooner or later into actual insanity, and many a noble spirit has been utterly prostrated by habitual loss of rest.

(*b.*) "Where a predisposition to insanity exists, nothing proves to be a more potent exciting cause than the loss of sleep. Persons thus unfortunately constituted must beware how they allow their duties or pleasures to interfere with this restorative process, which is indispensable even to their perfect safety. The records of our asylums show that in a large proportion of cases the disease was attributable chiefly to this cause, which a little more prudence would have prevented."

8. Before long, and sometimes from the very first, the intellectual faculties become involved. The ideas even in regard to simple things are confused and without logical arrangement, the sense of identity is often perplexed, the speech—the outward manifestation of the thoughts—is incoherent, the memory fails in regard to recent occurrences, the judgment is weak and vacillating, and the sufferer, naturally accustomed to rely upon his own intellect, loses faith in his mental capacity, and turns to others for the advice and guidance which he feels he

needs; any effort at continuous or severe thought, and especially arithmetical calculations, increase the difficulties of the mind, but no cause is so potent in this respect as emotional disturbance.

9. In addition to the foregoing evidences of mental and physical disorder, the face is flushed, the eyes suffused, the carotid and temporal arteries beat with increased force, vertigo is generally complained of, and the pupils are contracted sometimes to mere points. Examination with the ophthalmoscope shows the vessels of the retinæ to be increased in number, diameter, and tortuosity, and to pulsate with more than normal force. The optic disk is often found congested, and there is peripapillary infiltration.

10. The æsthesiometer reveals the existence of abnormal sensibility, either an increase or a diminution, on one side or other of the body.

11. The patient is likewise unable to make a straight line with the dynamograph, by reason of the irregular nervous action which originates in his brain.

12. Now, this state may exist for weeks or months, with more or less intensity, aggravated or lessened by the habits of life, the occupations, and the emotions and thoughts of the patient. (*a.*) It may then pass away, or, what is more commonly the case, it terminates in—1. An attack resembling apoplexy. 2. Epileptiform convulsions. 3. Inflammation of the brain or its membranes. 4. Mania, often of a transitory character. (*b.*) With the first three of these modes of culmination we have nothing to do at present. The fourth is of more momentous importance. (*c.*) "Even in healthy persons," says Dr. I. Crighton Brown,* of the Derby County Asylum, England, in his article on "Mania Ephemera," "or in persons of plethoric habit, this determination of blood may occasion transient delirium, with various signs of encephalic disturbance, such as extreme sensibility to light and sound, restlessness, pain in the head, and visual hallucinations; a flood of

* Medical Critic and Psychological Journal. Edited by Dr. Forbes Winslow. No. IX. January, 1863, p. 49.

distorted ideas flows through the mind, and overpowers it, bewilderment and incoherence follow, and for the time being the patient is to all intents and purposes maniacal. A distinguished physician narrates the case of a gentleman subject to attacks of determination of blood to the head, which caused him so much suffering and loss of moral control that he cut his throat to destroy his life. While recovering from the wound, attacks sometimes came on, first with beating of the carotids, then with flushing of the face and head, suffusion of the eyes, and feeling of distraction in the head. But it is not in the plethoric or healthy that determination of blood to the head is so likely to produce ephemeral mania as in the weak and anæmic, who, though suffering from general depression and debility, are still liable to irritation and exaltation of all the corporeal functions. And of all functions those of the nervous centers have been found most liable to excitement in cases of spanæmia. The generally intensely nervous character of persons with greatly prostrated strength has been long remarked, as also their proneness to excitement."

(*d.*) Dr. W. Carmichael McIntosh,* of Murray's Royal Asylum, Scotland, in his paper on "Morbid Impulse," says:

"Ordinarily, friends around do not dream of mental derangement, and even one examination by a physician may not always lead the patient to betray his defect, unless very skillfully handled; yet, in no long time, a desperate or disgraceful act may startle all alike by its impetuous suddenness and dangerous nature. For instance: it is related that a gentleman of high attainments and character, while in the apparent enjoyment of excellent health and spirits, had a dinner-party of his friends; there was no one present so agreeable and attractive in conversation and manners as himself, but in the middle of the festivity he arose and politely apologized for absenting himself for a moment, and retired to an adjoining

* Medical Critic and Psychological Journal, No. IX., January, 1863, p. 102.

room, cut his throat to the vertebræ at the very time that his friends were drinking his health."

(*e.*) Dr. A. Devergie,* one of the most eminent alienists in France, in a paper read before the Imperial Academy of Medicine, entitled "Transitory Homicidal Mania; where does Reason end or Mania begin?" says: "Those physicians who have devoted themselves to the treatment of insanity, admit that, besides dementia, mania, and monomania, there exists an instantaneous, transient insanity, which they call transitory, and as the result of which an individual, until then, in appearance, at least, of sound mind, commits suddenly a homicidal act, and returns as suddenly to a state of reason."

XXII. It would be easy to quote a hundred authors of recognized pre-eminence in psychological medicine, to the effect that such an affection as temporary insanity really exists. The authorities on medical jurisprudence are likewise decided upon this point, and the fact is accepted every day by courts of law. It is unnecessary, therefore, to adduce further support to the doctrine.

XXIII. But the plea of temporary insanity is often abused. Suicide is extenuated, and criminals escape, on the ground that their acts, committed in the "heat of passion," are perpetrated during an attack of temporary insanity.

1. Premising, therefore, that there is no doubt that emotion may give rise to temporary insanity, I proceed to indicate the marked differences which exist between "heat of passion" and temporary insanity. To do this effectually, clear ideas must first be formed of the meaning of certain terms.

2. An emotion is that pleasurable or painful sensation which arises in us in consequence of sensorial impressions or intellectual action. According to Bain, the word emotion is used to comprehend all that is understood by feelings, states of feelings, pleasure, pain, passion, sentiments, affection, etc.

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* The Journal of Psychological Medicine and Mental Pathology, No. XVI., October, 1859, p. 538.

3. Passion is emotional activity. It designates that state of mind in which certain impressions or emotions are felt, and which is accompanied by a tendency or impulse, often irresistible, to act in accordance with these impressions or emotions irrespective of the intellect. An act performed in "the heat of passion" is one prompted by an emotion which, for the moment, controls the will, the intellect not being called into action. It is an act, therefore, performed without reflection. (*a.*) The passions are to a certain extent under the control of the will; and this power of checking their manifestations is capable of being greatly increased by self-discipline. Some persons hold their passions in entire subjugation, others are led away by very slight emotional disturbances. (*b.*) The law recognizes the natural weakness of man in this respect, and wisely discriminates between an action done after due reflection, and one committed in the midst of passional excitement.

4. The acts performed during temporary insanity, in their more obvious aspects, and when viewed isolatedly, resemble those done in the heat of passion. *But they are so only as regards the acts themselves.* (*a.*) Thus, a person entering a room at the very moment when one man was in the act of shooting another, would be unable to tell whether the homicide was done in the "heat of passion," or under the influence of temporary insanity. (*b.*) He would be equally unable to say whether it was committed with malice aforethought or in self-defense. (*c.*) The act, therefore, can teach us nothing. We must look to the circumstances and to the antecedents of the perpetrator for the facts which are to enlighten us as to the state of mind of the actor. Now, the conditions of temporary insanity are so well marked that there can be no difficulty on this score, and those which precede the act of culmination have already been dwelt upon at sufficient length; suffice it, therefore, to repeat, *that the act which marks the height of the paroxysm is always preceded by symptoms of mental aberration, while acts done in the heat of passion are not thus foreshadowed.*

5. And, as regards the subsequent state of the individual,

the distinction is equally apparent. (*a.*) The one who has committed a criminal act in the heat of passion, soon subsides to his ordinary equanimity, and begins to think of his safety. (*b.*) The other, who has perpetrated a similar act during an attack of temporary insanity, never thinks of escape, nor even avoids publicity. He may even boast of his conduct, or deliver himself into the hands of the law. (*c.*) What is, however, of greater importance, is the fact that, though he may subside into a condition of comparative sanity, *the evidences of disease are still present, and remain in him for days, weeks, or even months and years.* These symptoms are in general those of cerebral congestion, to which attention has already been directed.

6. In heat of passion the act follows immediately on the excitation of which it is the logical sequence. In temporary insanity, the act is the culmination of a series of disordered physical and mental manifestations, and may or may not be in relation with the emotional cause.

7. Bellart, quoted by Devergie, has said that, by assimilating the passions to mental alienation, immorality is justified: it is placed upon the same level as calamity. The man who acts under the empire of passion has commenced by suffering his will to become depraved. The man who acts under the influence of calamity obeys, as a machine, a force, the power of which he cannot contend with. How far the accused in the present case was acting from passion, and how far he was under the influence of a calamity, the force of which he could not resist, will be apparent from a consideration of the facts developed during the trial, and those which I have ascertained by my personal examination.

XXIV. 1. On the 25th of November, 1869, at about five o'clock in the afternoon, the accused was standing at the end of a counter in the office of the *Tribune*, in this city. A few minutes previously he had been writing at a desk. While standing as above stated, Albert D. Richardson entered the office, crossed it, and went to a desk at the end of the counter near where the accused stood. The counter was between the parties. The accused, distant about four feet, drew a pistol

and fired at Richardson, wounding him in the abdomen. Death ensued on the 2d of December.

2. Immediately after the shooting, the accused left the office without molestation, and proceeding to the Westmoreland Hotel, at the corner of Fourth Avenue and Seventeenth street, registered his name in full, and had a room assigned to him. A few hours afterward he was arrested.

3. It is in evidence that the accused, who was a married man, was devotedly and passionately attached to his family; that he had intercepted a letter from the deceased to his wife, which was calculated from its sentiments to arouse the most powerful emotions in the human mind; that his wife had left him, taking with her both the children; that he had instituted legal proceedings to obtain the possession of his offspring; that he was opposed by his wife and the deceased, the latter supplying the funds for the resistance of the father's efforts; that these troubles partially unsettled his reason, so that several persons who knew him and were thrown into contact with him remarked that he was incoherent, rambling, excited, and the thought of his domestic difficulties was almost continually present, as shown by his conversation and actions; that he was unable to sleep; that he wandered through the streets at night in all kinds of weather, talking of his troubles to policemen and others; that he could not by reason of his mental condition perform properly the duties of the office he held under the Government of the United States; that various powerful medicines, such as morphia, Indian hemp, hyoscyamus, and bromide of potassium, had been prescribed for him in large doses by his medical attendants; that for several days previous to the homicide he had taken large quantities of morphia; that during this period, and even before, his pulse was never below 104 per minute, and was frequently much more rapid; that his face was flushed, that there was involuntary twitching of the facial muscles; that his eyes were suffused and his pupils contracted; that he had flashes of light and dark specks before his eyes; that he suffered from vertigo; that his head was painful and hot; that he had frequent outbursts of excitement; that he had hallu-

cinations and delusions; that he had doubts as to his identity; that he had threatened to commit suicide; that his memory was impaired; that while in this condition he heard that a divorce had been granted to his wife, in the State of Indiana, on *ex parte* statements; that the symptoms of mental disorder then became greatly aggravated; and that on the afternoon of the homicide he was met in the street by a friend who remarked his wild expression, and who was convinced that he was not in his right mind.

4. It is also in evidence that a first-cousin of the accused died insane, and that the resemblance of the latter to him in features and manner is very great.

5. From this full and decided evidence, there can be no doubt in regard to the mental condition of Daniel McFarland during a long period previous to the homicide; and that, for about two weeks prior thereto, his state was such as to render him entirely irresponsible for his acts. If he had been taken away to a distance, he might and probably would have recovered his mental control, and the homicidal act would never have been perpetrated; but, surrounded as he was with all the associations and circumstances which had so unsettled him, and constantly receiving fresh accessions to his troubles, recovery was impossible. While at the very height of his state of mental aberration, he accidentally met the man most nearly connected with the origin of all his difficulties—the one to whom he attributed the wreck of his hopes—the one who, he believed, had injured him more than all the rest of the world combined. Without an instant's reflection, indeed in his condition without the possibility of reflection, he perpetrated the act for which he has just been tried for his life. The sight acted upon him just as does the sight of dangerous weapons upon other insane persons.

6. A case related by Dr. McIntosh, in the memoir already cited, well illustrates this point: A religious monomaniac had for many years an antipathy to a fellow-patient who assisted in his gallery, imagining that he practiced animal magnetism and various other tortures of his "soul" upon him. He

avoided him as much as possible, but he never evinced any homicidal tendency, at least so as to attract attention. So far from being suspected of such a tendency, he was indeed trusted with many weapons, such as cricket-bats, bows and arrows, etc., which might have been used with deadly effect on his victim had he chosen, for he was often within easy access. One rainy winter evening, however, he startled the gallery by a sudden and desperate onslaught on his victim, resulting in the death of the latter. Seeing the object of his antipathy reclining easily on a sofa and sleeping, and espying a ready and rare weapon at hand, he advanced stealthily upon him so as to approach the sleeping person from behind, then wielding the weapon on the devoted man's head so conveniently situated, he caused a compound comminuted fracture of a fatal nature. He subsequently confessed that it was the sight of the weapon and the tempting posture of his neighbor that overcame him.

7. The first thought of a person who has criminally killed a human being is ordinarily of his own safety. He is conscious that he has committed an offense, he knows that he has incurred punishment, and he seeks to escape it. The accused took no measures toward that end; on the contrary, he went to a well-known hotel, registered his name, and quietly waited to be arrested. This was not the act of a criminal. It is exactly, however, such conduct as might have been expected from an insane man.

8. The antecedents of the accused and the concomitant circumstances of the culminating catastrophe leave no doubt that for a considerable period before the homicide he was affected with mental derangement, that the act itself was done during an attack of temporary insanity, and that immediately subsequent thereto he was not entirely restored to reason.

XXV. And now as to his subsequent condition:

1. On the 6th of March, three months after the homicide, I visited Daniel McFarland in the city prison, at the request of his counsel, and saw him for the first time.

2. I found his head large, well-formed, and exhibiting no

marks of injury or disease, his general appearance indicated a sanguineo-nervous temperament.

3. His whole nervous system was largely developed and irritable to an extreme degree, as shown by involuntary twitching of the facial and other muscles, great excitability of manner, and an easily aroused emotional nature.

4. The symptoms of cerebral congestion present were: abnormal heat of the face and head, throbbing of the carotid and temporal arteries, suffusion of the eyes, unequal size of the pupils, intolerance of light, pulse rapid (108) and irregular, a different degree of sensibility on the two sides of the body, as shown by the æsthesiometer, and congestion of the retinæ and optic disks, with partial atrophy of the latter, as revealed by ophthalmoscopic examination.

5. The foregoing symptoms were objective. The subjective symptoms were wakefulness, flashes of light before the eyes, noises in the ears, and pain and a sensation of fullness in the head.

On the 10th of March I made another examination.

6. I found the face flushed, the muscles twitching, the eyes suffused, the head hot, and the pulse ranging from 104 to 114. The mental excitability was excessive, especially when his troubles were mentioned, and there was a constant disposition to talk about his affairs. While my finger was on his wrist, I happened to mention Mr. Richardson's name, when his pulse at once increased from 104 to 128 per minute.

March 18th.—He was much excited, and began at once to talk of his troubles; pupils contracted, pulse 108, 104, 124, hard and full; face flushed, and temporal and carotid arteries throbbing with violence; muscular twitching greater than I had ever before seen it in him.

March 21st.—Pulse 110; other phenomena similar to those present on 18th.

March 29th.—At this visit I showed him the photographs of his wife, and asked him some questions about them. At the sight of them he was much moved, tears came into his eyes, his voice trembled, his speech became incoherent and ram-

bling, his articulation indistinct, and the muscular twitching was increased. His pulse rose to 142, and I was for a time apprehensive of serious consequences. After a while, however, he began to weep, and I succeeded in bringing him to something like calmness. But, during the whole of my interview, which lasted over an hour, he remained excited, and was at times incomprehensible in his language.

April 3d.—Dr. Austin Flint visited him with me, and expressed the opinion, after a very full examination, that there was no disease of the heart or lungs, and that the frequency of his pulse was due to nervous derangement.

On the 20th of April I examined the accused again. His pulse was 132. The dynamograph showed that his muscular tone was low, and his nervous system weak and irritable.

7. The facts obtained at these examinations show that the accused, at a period of more than three months after the homicide, was still suffering with cerebral congestion; but perhaps not so extreme in degree as for several weeks before this event, but yet to such an extent as might readily, with a sufficient exciting cause, be developed into a condition of much greater severity. The confinement and seclusion he had undergone had certainly exercised a curative influence such as would have attended his isolation in an asylum for the insane.

The result of the trial is well known. After an absence from the court-room of scarcely two hours, the jury returned a verdict of not guilty. That this verdict was based upon the views expressed by the medical experts for the defense, of whom the writer was one, I have positive assurance. Into the merits of the other questions raised before, during, and since the trial, it is not in my province to enter. That the accused was insane for a long period before the homicide there can be no doubt. The touching story of his wife published since the trial shows this in such indubitable language, and she expresses her opinion to this effect so decidedly, that the wonder is why her unfortunate husband was not long since placed under the restraint of an asylum, and why, before he was tried for his life, the facts and opinions contained in her

statement and that of Mr. Richardson were not brought forward in extenuation of his conduct. That he is at present in such a physical and mental condition as to render him liable, upon comparatively slight cause, to another explosion of mania, is a fact in regard to which repeated examinations leave no doubt upon my mind.

A MEDICO-LEGAL OPINION

RELATIVE TO THE

SANITY OF CARLTON GATES.

By CHARLES A. LEE, M.D., of Peekskill, N. Y.*

A definition of insanity is usually considered an essentially preliminary in the decision of questions like the present, although it is generally acknowledged that a definition, applicable to all cases, is quite an impossibility. The following, however, may be deemed sufficiently accurate for all practical purposes: *Insanity is a chronic disease of the brain, producing either derangement of the intellectual faculties, or a prolonged change of the feelings, affections, and habits, or both—its form depending on constitution, temperament, and various accidental circumstances—but, in all cases, perverting or destroying the freedom of the will.*

The following "opinion" has been deliberately and conscientiously formed from a knowledge of the entire testimony offered in this case, all of which has been either heard or carefully read; also, from my own intimate acquaintance of over twenty years:

I. Carlton Gates labored under confirmed insanity during the last year of his life at least, and probably for a much longer period.

II. The form of his mental disease was what usually goes

* Read before the Society, September 8, 1870.

under the name of *monomania*, that is, a perversion of the understanding limited to a single object, or a small number of objects, accompanied in the present instance, as it often is, with *moral perversion*, or disorder of the natural feelings, affections, and habits.

III. A striking characteristic feature in the case, and one which was never absent during the last year of his life, was the existence of delusions on a variety of subjects, but chiefly in regard to the hostility of his parents and relatives, and to *poisoning*.

IV. The mental derangement was amply sufficient to impede and destroy the free and healthy exercise of the intellectual faculties, and the freedom of the will, so that the power of thinking and acting freely was annulled.

V. In consequence of this impairment of the mind and freedom of the will by disease, he was incapable of performing a valid civil contract, as making a will; and also was deprived of all criminal responsibility.

VI. The proof of *delusion* in the mind of the testator is amply proved by the testimony of almost every witness in the case, especially his physicians, parents, relatives, and such servants as were allowed to be about his person, and permitted to testify. It seems remarkable that those who were with him the most during his last illness, as the Rev. Dr. Hulbert, his housekeeper, nurse, etc., and knew best the state of his mind at that time, were not called upon the stand to testify. There is, however, abundant proof to the point without it.

VII. This deponent is not called upon to discuss the subject of *undue influence* any further than to say that the mind of the testator was in such a diseased and perverted state as to render him peculiarly liable to impositions and unreasonable prejudices of all kinds, especially to artful attempts to excite suspicions of his nearest and best friends, and to make him entertain a belief that the individual making such attempts was his very dear and "particular friend."

VIII. That such attempts were persistently made, and that they proved successful in the present instance, is abundantly established by various witnesses, as well as by the wording of

the will itself. The *a priori* improbability of such a wicked effort being made must yield before the evidence adduced in proof of the fact, which in this case cannot be disputed.

IX. When it is considered that, just before his last visit to Europe, Gates had made a will, restoring the whole of his property to his mother, and that it remained unaltered until his weak and perverted mind had been thoroughly poisoned against her, and nearly up to the time of his death, when a new will was executed, revoking his former bequests in favor of the very individual who, it is proved, had caused the new will to be made, and who had had sole charge of Carlton's person for the last two weeks of his life, such an instrument appears so unreasonable, so unnatural, and so unjust on its very face, and bears upon it such irresistible marks of intrigue, dishonesty, and fraud, that it must necessarily be rejected.

X. That the existence of *delusion* is the recognized legal test of insanity, is so well known and acknowledged, that the learned counsel, employed by the contestants of the will, will have no difficulty in establishing it by many well-attested cases and decisions, both foreign and native. I shall, therefore, only quote here two legal authorities in point.

XI. "Setting aside cases of dementia, or loss of mind and intellect, the true test of insanity is *mental delusion.* If a person persistently believes supposed facts, which have no real existence except in his fevered imagination, and against all evidence and probability, and conducts himself, however, logically upon the assumption of their existence, he is, so far as they are concerned, under a *morbid delusion; and delusion in that sense is insanity*" ("Abbott's N. Y. Digest," vol. vii., 1863).

XII. "What constitutes insanity of mind is a question which has been very much discussed, especially of late years; and the opinions of learned judges seem at first view to be conflicting; but much of the apparent discrepancy may be reconciled by adverting to the nature of the cases respectively in judgment. The degree of unsoundness or imbecility of mind, sufficient to invalidate the acts of the party in some cases,

may not suffice in others. But in regard to insanity, where there is no frenzy or raving madness, *the legal and true character of the disease is delusion;* or, as the physicians express it, illusion or hallucination; and the insane *delusion* consists in a belief of facts which no rational person would believe" ("Professor Greenleaf's Law of Evidence," vol. i., p. 464).

Numerous other legal authorities to the same point are omitted.

XIII. There is perfect uniformity of opinion in regard to this test of insanity, among all the medical authorities. They all agree with our distinguished countryman, Dr. Isaac Ray, who delares that "*delusions, if genuine, can only spring from insanity*" ("Medical Jurisprudence of Insanity," p. 142). Reference on this point may be made to Maudsley on the "Physiology and Pathology of the Mind," p. 327; also to Esquirol, Pritchard, Guy, and Combe, on "Insanity."

"In *monomania* proper, and in *melancholia*," says Maudsley, "we have a partial ideational insanity, with fixed *delusion* or *delusions* upon one subject or a few subjects, apart from which the patient reasons tolerably correctly. Psychologically speaking, the existence of a delusion indicates fundamental disorder of mental action—*radical insanity;* secondly, the delusion reacts injuriously upon other mental phenomena, interfering secondly with correct ratiocination, or due co-ordination of functions, and predisposing to convulsive mental phenomena; and, thirdly, while it cannot be subordinated to reflection, the individual may at any moment be subordinated to it, and act under its instigation."

It is unnecessary to quote medical writers to any greater extent, to show that *morbid delusion* is regarded as a true test of insanity. It must be recollected, however, that it is not maintained that such delusion exists in every case of insanity, but *that, where it does exist, there insanity exists.* For instance, I have known of several cases of *mania*, or general insanity or melancholia, and had charge of them, where there existed no delusion whatever.

XIV. There is another test of insanity, which is regarded by medical men as very important in forming correct conclu-

sions in regard to the existence of mental derangement, and which I have always looked upon as an invaluable guide in forming a correct judgment in these cases: madness, for example, is not often indicated so much by any particular extravagance of thought or feeling, as *by a well-marked change of character, or departure from the ordinary habits of thinking, feeling, and acting without any adequate cause.* I believe it cannot be questioned that the testimony fully discloses such a change in the conduct and character of Carlton Gates during the last year of his life, without any adequate motive or cause, and therefore conclusively establishes the fact of his insanity (see the testimony of Dr. and Mrs. Gates, Mrs. and Miss Nesbit, etc., etc.).

From a life-long and intimate acquaintance with the testator, he having resided a year in my own family, I was able to testify to the naturally amiable and kind disposition of Carlton, especially his strong attachment to his mother, and ardent affection for her, manifested, when abroad, by sending her numerous costly presents; his entire change in these and other respects is amply exhibited in the testimony, and needs no comment.

XV. In forming a judgment in this case in regard to the state of mind of the testator, I also find sufficient evidence of insanity *in the nature of the will itself.* To say nothing of the strange and unnatural nature of the bequests themselves, proving conclusively the change of feeling and disposition already referred to, the confident expression of Carlton's belief in the fact of his having been *poisoned*, notwithstanding the positive assurance of all his physicians that such was not the fact—the direction to have the *contents* of his stomach analyzed for the detection of poisons, supposed to have been administered *many months before*—he being a medical man; the appropriation of $25,000 (at first $50,000) for the prosecution of certain suspected persons not named in the will; the gift of the Yonkers estate to the corporation of Yonkers, although he knew he had no legal title to it, and was only trustee of the property; the false statements in regard to his father and mother, and her income, imbecility, etc., etc.; when

to all this we add the extraordinary *fear and suspicion of detection and discovery*, during the drawing and execution of the will, directing "doors to be carefully closed," and "to see that no one was about," who might possibly hear what was going on—all this, so characteristic of the cunning and secrecy of the insane, proves, in connection with the other circumstances, the positive insanity of the testator. There was, undoubtedly, reason enough remaining to render him conscious that he was about doing a wrong, perverse, and wicked act, for the insane are often able to distinguish between right and wrong, for, as soon as the will was executed, he exhibited no fear or suspicion whatever.

XVI. Nearly all professional writers on insanity speak of the great irritability of the insane—the perversion of the moral sense, and especially a change in the sentiments and feelings and affection toward their relatives and friends—a complete indifference or positive hostility toward them; and all this while they themselves are perhaps quite unconscious of the existence of any disorder, and then only where it has come on by slow degrees, and is only partial in its effects—but especially in the form of *monomania*, which afflicted Carlton. When the partial derangement of the intellect becomes organized and systematized, it is remarkable what a desperate degree of tenacity it presents; we find it in vain to attempt to argue with the patient, or convince him of his errors. He shelters himself behind his convictions with unshaken confidence in their truth; and if for a moment he be compelled to admit that his enemies are imaginary, and those from whom he has become alienated his best and dearest friends, in a short time, however, his delusive notions again reappear and take full possession of his mind.

XVII. I have generally found that in this form of insanity the understanding is tolerably sound on most subjects but those connected with the delusion; and even where the disorder is more complicated, involving a more extensive train of morbid ideas, though the patient may reason correctly, and talk rationally on many subjects unconnected with those of his delusion, the understanding is more extensively deranged

than is generally supposed. In these cases, by close observation, we can generally detect some perversity of feeling or action altogether foreign to their ordinary character; and thus it was with Carlton during the last years of his life. At first, and, indeed, for a considerable portion of the time, there was little intellectual derangement, but gradually there was distinctly observed creeping over him a profound perversion of the sentiments and affections, marked at times by real maniacal excitement and acts of violence which have been erroneously attributed to *intoxication*. But, if one had conversed with him, during all this time, on subjects not connected with the morbid part of his mental state, probably, little or no difference between him and other persons would have been noticed. He preserved so correct a notion of propriety of conduct and the etiquette and social observances of life, that he usually conducted himself in society as well as most other people. But, through the influence of selfish and interested persons, as shown by the witnesses, whose avaricious designs prompted them to the unholy work, his feelings became alienated from his friends; he imputed to them designs against his welfare, his happiness, and even his life; he suspected even his parents of a design of *poisoning him;* and at last, contrary to all evidence and assurances, died in the full belief that he had been poisoned!

XVIII. The evidence, then, fully sustains the following conclusions:

1. *The existence of permanent delusion* on several points, especially in regard to the matter of poisoning—by various persons and at different times.

2. A marked change of feeling, character, and conduct; indeed, an apparent total loss of affection for his parents and friends, and deadly hostility toward them.

3. Paroxysms of monomaniacal excitement, during which his conduct was marked by acts of insane violence, restlessness, boisterous behavior, profanity, sleeplessness, abusive language, etc.

4. Positive hatred of his mother, and a desire to punish her by excluding her from any share in the property given him by

her, and considering her insane, against all evidence to the contrary.

5. A persistent belief in the existence of facts which had no real existence except in his disordered imagination, and against all evidence and probability, and *bearing directly on the nature of his will.*

6. As these delusions and false notions had special reference to his parents and relatives, who would naturally have been the objects of his testamentary capacity, a will, made under these circumstances, must necessarily be invalid.

XIX. The above statements and considerations, perhaps, contain all that is really necessary to establish the want of testamentary capacity in the testator; there are some considerations, however, connected with the subject which may properly find expression in this place.

XX. Although it is claimed by most writers on mental diseases that the mind of the *monomaniac* is sound, apart from his delusions, I hold that the diseased idea is a part of the mind; and that the mind, therefore, is no more sound than the body is sound, when a man has a serious disease of some vital organ—that the exquisitely delicate and complex mechanism of mental action—the brain—is radically deranged; else, the morbid idea could not have been engendered and exist. The mind is not unsound upon one point only; but an unsound mind expresses itself in a particular morbid action. Moreover, as in the case of Carlton, when the delusion is once produced, there is no power of drawing a sanitary cordon around it, and thus, by putting it in quarantine, as it were, preserving all other mental processes from infection; on the contrary, the morbid center reacts injuriously on the neighboring parts, and there is no guarantee that at any moment the most desperate consequences may not ensue. In other words, speaking psychologically, I regard the existence of a *delusion as indicating fundamental disorder of mental action—radical insanity;* and that, *secondly*, the delusion reacts injuriously upon other mental phenomena, interfering, more or less, with correct ratiocination, and predisposing to acts of violence; and *thirdly*, while it cannot be fully subordinated to reflection and

consciousness, the individual may at any time be subordinated to it, and act under its instigation. Where delusion then exists, however partial the mental derangement may appear, the mind is actually *unsound*, not to be relied on, *and not to be held responsible;* disease is going on in it, and no one can tell when or where it will end.

XXI. Carlton Gates inherited a weak bodily frame, and an extremely active, sensitive, nervous temperament; in fact, it may be truly stated that he inherited what has been called the *insane temperament*, characterized by singularities or eccentricities of thought, feeling, and action. He was impressionable to subtle and usually unrecognized influences. There was in his constitution an innate tendency to isolation—to act independently, as an element in the social system; and there was evidently a personal gratification in the indulgence of such a disposition which seemed to mark great selfishness and vanity. This peculiarity of temperament was allied in him with considerable native talent and genius, qualities which we often find closely allied to madness; in his estimation he was right, all the rest of the world was wrong—he was forever in "a minority of one." This fatal heritage was painted upon his physiognomy, on his external form, his ideas, passions, habits, and inclinations. There was little power of vital resistance in his system, and his personal habits were not conservative of vital force. *Pari passu* with the progress of corporeal disease, we find in him, as might almost have been anticipated, the *feeling* or *affective* life greatly perverted, his whole habit and manner of feeling was changed, his passions and moral affections became perverted and deranged more than one year before his decease; *ideational* or *intellectual* derangement succeeded, and, probably, had he lived, would have soon predominated. But, as in numerous other similar cases, the *affective disorder was the fundamental fact* preceding, and then accompanying intellectual disorder; and both would have been equally prominent had he long survived. But during his life *moral alienation* was the predominant form of his mental derangement. He had labored for many months previous to his death under a tubercular state of the lungs, seriously

impeding the oxygenation and healthy renewal of the blood, and necessarily aggravating the mental disorder.

XXII. It cannot be denied that, in the presence of strangers, Carlton, for the most part, manifested no special signs of insanity; but then it is to be recollected that *the insane have great power of self-control;* they can frequently conceal all indications of mental derangement, where it is policy to do so; and so notoriously is this the fact, that insane individuals, and even inmates of our lunatic asylums, are often considered sane by others and unjustly confined. To feign sanity on the part of the insane is far easier than the opposite—to feign insanity on the part of the sane. The latter requires what is not often possessed, namely, an accurate acquaintance with the characteristic features of the various kinds of mental derangement. Such persons, accordingly, are apt to overact their part, and seldom escape detection. It is generally supposed that persons actually mad must show it on all occasions and in their whole conduct. But this is far from being the case where there is any motive to sane conduct. Thus, in nearly all our insane asylums, religious chapel-services are regularly observed on Sundays, at least, and in many of them daily prayers are held night and morning, at which a large proportion of the patients are present, and whose conduct is as quiet and orderly as is generally observed in religious assemblies among sane people. Violent conduct, growing out of ungovernable impulse, is rare among the insane. Carlton Gates is a good example to show to what extent a madman may have control of his actions even where a powerful impulse prompted him to acts of extreme and murderous violence; and so decorous was his behavior in the presence of his physicians, and the subscribing witnesses to his will, that they were even led to doubt his insanity. But, when we consider that they had no suitable opportunity, and used no proper tests by which to judge of his mental condition, it is by no means remarkable that they failed to discover his actual state; and their opinion should have, therefore, very little, if any, weight. It is somewhat singular, however, that, a few days before his decease, they all thought him incapable of making a valid will.

XXIII. As already remarked, mental derangement is a matter of *degree*, and as no two people are exactly alike in mental character and development, so no two cases of mental degeneration are exactly alike. As the brain presents every variety of individual functions in health, so also it presents every variety of morbid function in disease; consequently, two cases of insanity may resemble one another in the general features of exaltation or depression, or in the character of the delusion (as poisoning, for example), and yet each have its own special features. *In fact, insanity is no fixed morbid entity;* but every case of it is an example of individual degeneration, representing individual mental life under other conditions than those regarded as normal or typical. The features of insanity, in any given case, must depend very much on the degree of development the mind of the individual has reached; the more cultivated the mind, the more various and complex the symptoms of its derangement; moral insanity, so-called, does not exist among savages.

XXIV. This attempt to conceal the existence of insanity, on the part of an individual, implies of course a self-consciousness that he is a victim to it.

As we often see in the incipient stage of intoxication, a person will make a determined effort to comport himself like a sober man, being, to some extent, conscious of the degrading and brutalized condition to which he is reduced; he thus endeavors to conceal from observation his actual state by making a great effort to control his ideas, talk rationally, and walk steadily; and, although much intoxicated, he is possibly able, by a resolute and determined effort of the will, for a time to play well his part, and disarm all suspicions as to his actual condition of inebriation. This is very analogous to the state of the mind in incipient insanity. The patient is tolerably aware of his condition—he battles courageously, and often successfully, to disarm all suspicions as to his mental unsoundness—to banish all unnatural and unhealthy thought and mental impressions; but the morbid condition of the brain proves too much for him—too strong for his will to control; and first

one weak point shows itself and then another, till finally he becomes, as Carlton Gates did, the victim of morbid delusion —a mere wreck of what he once was!

XXV. It is now nearly thirty years since the laws of England and the decisions of the courts, both in that country and the United States, have recognized both *partial and general intellectual insanity*, as well as *partial and total moral insanity*, as a ground both of exclusion of convictions for crime, and as incapacitating for the performance of civil contracts, especially for making a valid will.

Besides other cases, where *partial moral insanity*, assuming the form of monomania, has served as a successful ground of defence for an alleged criminal act, I may mention that of Kleim, tried in the city of New York in 1845, before Judge Edmonds, for homicide. In charging the jury in this case, Judge Edmonds remarked as follows:

"*It must be borne in mind that the moral as well as the intellectual faculties may be so disordered by disease as to deprive the mind of its controlling power.*"

From that time, at least, to the present, *moral insanity* has become firmly established as a part of the jurisprudence of this State.

It will, doubtless, yet become an admitted principle in jurisprudence, that sometimes the character of the *criminal act* itself will furnish sufficient evidence of its having been prompted by insanity, especially where the motive defies all penetration or suspicion, and the mind itself has previously evinced no positive signs of impairment, and the most skillful psychological expert will detect no other proofs of its existence, after the closest investigation of the bodily and mental condition of the party; as where a mother murders her children, etc., etc.

And so also the nature of a *civil act, as a will*, depriving a parent, brother, sister, or other relative, of an inheritance which would naturally, rightfully, and legally fall to them, and which, perhaps, as in the present instance, was bestowed on the party by them, and toward whom no feeling but that of affectionate attachment had existed up to a late period, and

then had become changed without any adequate cause or motive; I say such an unnatural and causeless act will of itself prove the mental unsoundness of the party, and the will or other act will be declared, as a matter of course, invalid. This would be a much safer principle to act upon in jurisprudence than an abstract knowledge of right and wrong; and, while the results would be more satisfactory, an immense amount of useless litigation and expense would be saved.

XXVI. The time will probably come when insanity will be divided into two grand classes, viz.: *insanity without positive delusion, and insanity with delusion,* or *affective and ideational* insanity; the present artificial classification of the disease is certainly not in conformity with nature; and the one suggested is really more scientific than one which, by postulating an exactness that does not exist, is a positive hinderance to an advance in psychological knowledge. Until this time arrives, medical experts will have to recognize forms of mental derangement where there are no delusions. The deviations from healthy mental life are innumerable, and the divine mind can only be pronounced perfectly sound; but let us not make divisions in knowledge where there are none in nature, but regard all present classifications as only provisional; some writers, for example, would make four kinds of insanity, with reference to the perceptions, the emotions, the intellect, and the will, which, it is stated, may be disordered aggregately or separately; but Nature knows no such classification; these forms of insanity run into each other, or co-exist in the same case; the intellect, for example, cannot be deranged without affecting the will; *delusion*, the true test of insanity, may exist in all forms of it, and the same is true of emotional disturbance, etc.

XXVII. I have already mentioned the strong predisposition to insanity on the part of Carlton, and some of the causes which probably precipitated it. These causes were such as usually undermine the constitution, and produce bodily as well as mental disease. During his residence of many years abroad, it is believed he made a rather free and probably habitual use of wine, although he was not fond of distilled liquors; but

even this mild stimulant exerted, no doubt, a very unfavorable influence upon his nervous, excitable temperament, and it constituted almost the only alcoholic liquor he drank after his return from Europe, in November, 1868; on the few occasions on which he ventured on a stronger drink, he exhibited symptons of slight intoxication; to which the attempt has been made, by the counsel employed to sustain the will, to attribute the hallucinations, delusions, and other symptoms of insanity manifested by the testator. This attempt, however, must signally fail, inasmuch as these delusions, etc., were *permanent* during the whole of the last year; whereas he seldom drank intoxicating or distilled liquors, and then generally far within the limits of decided inebriation. Yet it is a fact well known to those who have investigated disorders of the mind, that positive insanity is not unfrequently produced by alcoholic drinks; and these are often, it is to be feared, the occasions of great injustice being done by our legal tribunals. *Statistics prove that intemperance is the most frequent cause of insanity in the United States.*

XXVIII. Persons who are strongly predisposed to mental derangement, who possess the insane temperament, who labor under severe constitutional disease or chronic affections, where the blood is contaminated, or who are easily affected by small quantities of liquor, are often liable to become actually insane after taking such drinks; during which they are really as irresponsible for their acts as those laboring under the most decided insanity produced by any other cause. In this condition, it is true, hallucinations, illusions, and delusions may exist, and the sufferer may perpetrate crimes of which afterward he has no recollection, and of the nature of which, at the time, he is entirely unconscious. We meet occasionally with cases where the individual imagines he sees strange sights and hears strange sounds, as in *delirium tremens*, and commits strange and violent acts under such delusive impressions. The courts have repeatedly decided that such persons cannot be held responsible for civil or criminal deeds committed during the existence of such hallucinations.

XXIX. It has long been a well-known fact that a vitiated

state of the blood exercises a marked effect upon the functions of the brain; and the frequently observed effects of *alcohol* upon this organ is the best and simplest illustration of this statement. It is doubtless true that the temporary derangement produced by alcohol is very similar in many cases to the permanent insanity produced by any cause whatever. First, we usually observe an agreeable excitement—a lively flow of ideas, and a general activity of mind, as in the earlier stages of mania; then follow incoherence of thought and speech, passional excitement, the nature of which depends much on the temperament of the individual; then a stage of depression, followed, perhaps, by convulsions, paralysis, dementia, stupor, and even death. Just as we see in insanity, alcohol, like the other causes of derangement, affects different people according to their temperament—making a furious maniac of one, a driveling melancholic of a second, and a third it renders stupid, dull, and heavy; the constitution rather than the nature of the cause determines the form which the madness takes.

XXX. Another interesting fact may be noticed in this connection, and that is, that, besides *alcohol*, many other narcotic poisons may enter the blood, and derange the functions of the brain, such as *opium*, *belladonna*, *conium*, *stramonium*, *Indian hemp*, *Calabar bean*, etc., producing more or less delirium, hallucinations, illusions, and even insanity, where their use is long persisted in, or they are taken in considerable quantity. But the blood is not only thus poisoned by substances taken into the stomach, but also by the formation in the tissues, and retention of the blood, of matters generated in the system, as *urea and uric acid* in Bright's disease of the kidneys, so-called. If not eliminated from the body, these agents produce *uræmic poisoning* attended with delirium, convulsions, and death. Hallucinations and false perceptions are produced by all these substances.

XXXI. I have chiefly attributed the monomaniacal insanity of Carlton to a peculiar constitution and temperament, in which there manifestly existed a certain inherent aptitude or tendency to morbid mental and corporeal degeneracy, and

lacking that reserve power necessary to the trying occasions—"the wear and tear"—of life. Insanity and phthisis were its natural and legitimate fruits. Considerable predisposing influence in this case has been attributed to the circumstances of his education and to faulty moral training; but while it is freely admitted that an injudicious bringing up may aggravate an inherent latent mischief or defect, yet, where the germs of future disease, as in this case, are so deeply implanted in the very constitution itself, it must be an exceptionally excellent training, both physical and mental, that can prevent the usual and natural results; no one will pretend to say that the testator inherited any morbid taint of blood or vice of nature from either parent, except that which is common to all the race; neither was there ever set before him the evil of a bad parental example; but the morbid *nervous* element in his constitution accidentally predominated, subordinating to it all the other elements of his nature, and wrought the effect of developing an unnatural precocity strongly predisposing to disease. There was no parental harshness or neglect in his treatment; but, on the contrary, the utmost kindness, indulgence, and affection. This indulgence, it is possible, may have been carried to that extent as to somewhat interfere with or weaken the necessary lessons of renunciation and self-control; but this is so common a defect in the education and training of the youth of the present age that it calls for no special condemnation in this instance. "Let him that is without fault cast the first stone." So far as moral causes are concerned, much of the increasing insanity of the times may be traced to the habitual encouragement, on the part of parents, of self-feeling, vanity, and the egotistic element in the child, which go far to create a morbid predisposition and irritable sensitiveness which disqualify from bearing up successfully against the calamities and adverse circumstances of life. The prevention of insanity will, doubtless, be found in all those circumstances that go to develop strong characters — strong mentally and physically, intellectually, morally and corporeally.

XXXII. Edmonds, in his "Select Cases" (vol. 1., p. 35), has defined a *sane man* as one—

1. Whose senses bear truthful evidence.

2. Whose understanding is capable of receiving that evidence.

3. Whose reason can draw proper conclusions from the truthful evidence thus received.

4. Whose will can guide the thought thus obtained.

5. Whose moral sense can tell the right and wrong growing out of that thought.

6. And whose act can, at his own pleasure, be in conformity with the action of all these qualities—"all these unite to constitute *sanity*" (it is said); "the absence of any one of them makes insanity."

XXXIII. If the above statements be admitted as true, then Carlton Gates was evidently *not sane;* in other words, he was insane; for—1. His senses did not "bear truthful evidence," nor was his understanding "capable of receiving that evidence." For example, his mother invariably had treated him with the utmost forbearance, kindness, and affection; all her acts he interpreted as manifestations of neglect, abuse, and enmity. He was not capable of truly interpreting her conduct, as he always had been before. 2. His reason, such as it was, did not draw proper conclusions from the truthful evidence exhibited to him. His conclusions were all false, unreasonable, and unfounded, and therefore justify the inference that he was destitute of sound reason and understanding. 3. It is also manifest that his "moral sense" did not distinguish the "right and wrong" of his thoughts, or of the testamentary acts growing out of them, and, therefore, that he possessed no real freedom of the will; in other words, was insane.

XXXIV. I repeat, the symptoms and phenomena manifested in the case of Carlton, so far as known and testified to, justify the conclusion that there was present physical disease of the brain, which insanity always presupposes, and to that extent as to prevent perfect freedom of thought and action.

XXXV. It is very possible that physiology may not, for many years to come, furnish the complete data of a positive mental science; but it is not too much to say that it has already

advanced sufficiently far to overthrow the data of a false psychology, resting solely on self-consciousness. That the *brain* is the organ or instrument of the mind is now generally conceded; and that with each display of mental power there are correlative changes in the material substratum—the brain—that every phenomenon of mind is the result, as manifest energy, of some change, molecular, chemical, or vital, in the nervous elements of this organ, is also admitted. We need not here enter into a consideration of the real nature of mind; it is enough to know that it is most certainly dependent for its every manifestation on the brain and nervous system, and scientific research is daily disclosing more clearly the relations between it and its organ. Mental power is but an organized result, matured by insensible degrees in the course of life, and as much dependent on the nervous structure as the function of the liver is on the hepatic structure. So well established is this proposition that physiologists no longer seek for proof that the brain is the organ of the mind, but rather to investigate the conditions of its healthy activity, and the pathological evidence of the disease in the various forms of mental derangement or impairment. Those pathologists who have devoted the most attention to this department of science tell us that they have not failed to discover, invariably, pathological changes in the brain where *intellectual disorder* has existed in madness, and even in that form of insanity called *melancholia*, and also in extreme old age. Whatever may be said by the pure psychological school of philosophers, the world is indebted to physicians and physiologists for the only true philosophy of mind, namely: that, instead of being a simple entity—an independent source of power, and self-sufficient cause of causes—it is dependent on a material organ for all its manifestations.

XXXVI. If this be so, it is very evident that when physicians, from disordered mental manifestations, infer the existence of cerebral disease, it is nothing more nor less than a pure induction from well-known established facts and principles. It is not a *deductive* process of reasoning at all, as assumed by some philosophers, but one of simple *induction;*

and, having established the fact of the existence of cerebral disease, they may surely go on to point out its consequences, as revealed and illustrated by the pathological history of such cases. The process does not vary at all from that pursued in regard to any other important organ of the body—the heart, the lungs, liver, or kidneys—persistent disordered function points to a physical *lesion*, and this, in turn, demonstrates what were the nature and cause of the functional derangement. This has, indeed, been called "reasoning in a circle;" but it arises from the very nature of the case, and must be so, if there is any reasoning whatever. It is true that the phenomena, as regards mental soundness and capacity, are *objective* to the physiologist as well as others, to be determined by observation and the usual mode of inquiry; but the physiologist and pathologist are alone qualified to draw any correct conclusion whatever in regard to the nature or extent of cerebral disease. It is true that "physicians are not necessarily *metaphysicians;*" if they were *merely such*, they would be no better judges in respect to questions of sanity or insanity, cerebral health or cerebral disease, than any other persons; in short, it would be quite absurd to call them in as *experts* in any case involving these questions. Any other opinions would be equally as valuable and reliable. The pure *psychologist*, who relies entirely on the psychological method of self-consciousness in investigating mental phenomena, who regards the mind as an *entity*, acting independently of a material organism, and aims to discover the laws of the human mind by contemplating it in itself, must confess that, if his theory be admitted in insanity, *the mind itself is diseased*, and if diseased it may perish like the body. To such a conclusion must the psychologist inevitably arrive, who rejects the received doctrine of the dependence of mind on a material structure for its earthly manifestations. When these psychologists overlook the physical structure and functions of the body in their study of the human mind, they remind us of the story of the philosopher who, while he gazed upon the stars, fell into the water; for if he had looked down he might have seen the stars in the water, but looking aloft he could not

see the water in the stars (Lord Bacon, "De Augment. Scient.," b. ii.).

JUDICIAL DECISIONS IN SIMILAR OR ANALOGOUS CASES.

XXXVII. As the legal bearings of the case belong more especially to the learned and able counsel employed by the contestants of the will, it will not be necessary for me to enter upon them to any great extent. During the last quarter of a century, there have been several decisions in the English and American courts, both in criminal and civil cases, especially in such as relate to wills, based on the now recognized principle that *delusion* is a true test of insanity; and these decisions have now the force and authority of common law.

XXXVIII. "Where there is no direct evidence of the deceased's state of mind at the time of the act done, recourse must be had to the usual mode of ascertaining it in such cases —*which is, looking at the act itself.* The agent is to be inferred rational, or the contrary, in such cases, from the character broadly taken of his act. *Testamentary dispositions that conflict with the natural distributions of property, and the known and expressed intentions of the testator, are to be held as sufficient evidence of unsound mind.*" [Carlton had made a will already, giving all his property to his mother.] (Sir John Nichol in "Addams's Ecclesiastical Reports," 74.)

"I cannot but think that a mental disorder operating on partial subjects should, with regard to those subjects, be attended with the same effects as a total deprivation of reason" (Pothier on "Obligations," Appendix 24).

"When a man suffers under a partial derangement of intellect, if the act done bears a strict and evident reference to the existing mental disorder, we cannot see why the law should not interpose a limited protection; and still less, why courts of equity should deny their aid in such cases" (Paris & Fonblanque, "Med. Jurisprudence," p. 30).

ENGLISH CASES—CASE I.

XXXIX. In the case of Dew *v.* Clark ("Addams's Ecclesiastical Reports," 79), the existence of monomania is recognized

on the ground of *delusion*, and its operation on the understanding, in controlling the civil acts of an individual. The testator, Scott, had conceived a violent antipathy against his daughter, without any real or adequate cause, which was declared to be solely the offspring of delusion in a disordered mind; and his will, which cut her off from all participation in his estate, was set aside on that ground alone.

CASE II.

XL. See case of White *v.* Wilson (13 Vesey's Reports, 88). Here the testator, in a state of *delirium*, in fever, received a draught from the hands of his brother, and conceived the idea that it was intended to destroy him; which belief continued after his recovery, and became so controlling, that, in consequence, he disinherited his brother in his will; a verdict was obtained in the Common Pleas against the will, but resulted afterward in a compromise. "No one," says Ray, commenting on this case, "would be hardy enough to affirm that Greenwood's mind was perfectly rational and sound, and, as his insanity displayed itself on all topics relating to his brother, every act involving his brother's interests, to go no further, ought, consequently, to have been invalidated" ("Med. Jurisprudence of Insanity," p. 239).

(Esquirol has related a case of a very similar kind, where a person conceived an antipathy against his brothers, sisters, and other relations, who, he believed, were seeking to destroy him; under the influence of this delusion, he made testamentary dispositions, and Esquirol, being consulted respecting their validity, gave it as his opinion that the testator was laboring under insanity. The will was consequently set aside, ("Annales d'Hygiène Publique," 111, p. 370.)

XLI. An elderly lady was excessively penurious and eccentric, very irritable and quarrelsome. She conceived the insane delusion that her brother had joined the Catholics, to whom she felt a strong aversion, and in consequence disinherited him. The will was consequently set aside (Wharton and Stillé, "American Medical Jurisprudence," p. 20). In this case Lord Brougham denied the existence of *monomania* or

partial insanity, and maintained that, the mind being "one and indivisible, and if 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" (Waring *v.* Waring, 6 Moore, P. C. Cases, 349). "It may therefore be considered as the present law of England," says Wharton, p. 23, "that a person partially insane is incompetent, so far as the making of wills or contracts is concerned."

XLII. It is quite unnecessary to quote English decisions in criminal cases. The principle, however, which has been recognized in all the recent cases is that—

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. "That, therefore, homicide, under such a delusion, is not liable to punishment."*

AMERICAN DECISIONS.

XLIII. The various decisions of American courts are well summed up as follows, by Judge Sergeant, of Philadelphia, before the Supreme Court of Pennsylvania, in the case of Boyd *v.* Eby (8 W., 70), 1839:

"The only question in such a case is, whether the *testator was 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.*"

* By the term "punishment," as here used, is to 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 of 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.

XLIV. Judge King, also of Philadelphia, in the case of Leech *v.* Leech, 11 Pa. L. J., 179, then closing a judicial career of twenty-seven years' duration, remarked as follows:

"A monomaniacal delusion, inveterately entertained by a testator against those who would otherwise have been the natural objects of his bounty, and shown to be the reason which has excluded them 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."

XLV. I would refer also to the case of The American Seamen's Friend Society and others, appellants, *v.* Hesters, Hopper and others, respondents (Tiffany, N. Y. Reports, Appeals, vol. vi., p. 619).

The opinion of the Court of Appeals in this case was rendered by Judge Denio (December, 1865), affirming the following principles, and the decree of the Surrogate and the Supreme Court rejecting the will:

1. The true test of insanity affecting testamentary capacity, etc., aside from cases of dementia, or loss of mind and intellect, is *mental delusion.*

2. A person persistently believing supposed facts, which have no real existence, against all evidence and probability, and conducting himself upon the assumption of their existence, is, so far as such facts are concerned, under an *insane delusion.*

3. If a testator at the time of making his will is laboring under any such delusion in respect to those who would naturally have been the objects of his testamentary bounty, and the Court can see that the dispository provisions were or

might have been caused or affected by such delusion, such instrument is not to be deemed to be his will.

In this case, the testator believed that all his relatives were set against him, and had conspired together, and were endeavoring to kill him by the administering of chloroform, or some other means. His physician testified that he considered the deceased a *monomaniac* in respect to his family and relations.

XLVI. The same principles were affirmed by a decision of the Supreme Court of the State of New York, in the case of Stanton and wife, appellants, *v.* Wetherwax and others, respondents (April, 1853—"Barbour's Supreme Court Reports," vol. xvi., p. 259).

Judge Gridley, after quoting as authority Sir John Nichol in the celebrated case of Dew *v.* Clarke (3 Ad., 79; "English Ecclesiastical Reports," vol. i., p. 441)—see above case already referred to—proceeds to say that "the testator was *partially* insane, and something more than a *monomaniac*, for he was under a strong *delusion*. On more than one subject a *monomaniac* may make a valid will, where the provisions of the will are entirely unconnected with, and of course uninfluenced by, the particular *delusion*. But, where there is good reason to believe the will is the offspring of that particular *delusion* which has seized his mind and controls its operation, the rule is otherwise. A will thus made, under the influence of a powerful *delusion*, which has not only impaired but perverted his judgment and understanding in relation to subjects connected with the provisions of the will, so as to exercise a controlling influence in the disposition of his property, is not the will of a testator of sound mind. His mind is unsound *quoad* the very subject on which he is called to exercise its powers in making the will" (p. 262).

The decision of the Surrogate of Herkimer County was reversed, and the will declared null and void.

XLVII. The most recent case bearing on the question of *monomania*, as affecting testamentary capacity, is that lately brought before the Surrogate of Orange County, N. Y., in the matter of proving the last will and testament of John C. Calhoun. I need not give the particulars of this interesting

case, as they are, doubtless, well known to this court; in many respects they bear a striking resemblance to those of the present case, but the proof of delusion and insanity in the testator is far less strong. It will suffice for my present purpose if I quote briefly from the opinion of his Honor Gilbert O. Hulse, Esq., Surrogate; an opinion equally honorable both to his head and heart:

"I will first consider the question whether the testator was so far unsound in mind that the will is invalid for that reason. He was not an idiot or a lunatic, but it is said that he was afflicted with a form of insanity known as *monomania*. Monomaniacs are those persons who are insane upon some one or more subjects, whether it relate to one or more persons or things, and are apparently sane upon all others. Such persons are competent to make a will, unless the subject of their infirmity *is involved in the making of it*. The belief in the existence of mere *illusions or hallucinations, creations purely of the imagination, such as no sane man would believe in, is unequivocal evidence of insanity. The persistent belief of a person in supposed facts, which really have no existence except in his imagination, and who acts on such belief, proves him, so far as such acts are concerned, to be acting under a morbid delusion. Such a delusion is partial insanity. When seen it appears that the will is the direct offspring of such partial insanity, it must be regarded as invalid, though the general capacity of the testator is unimpeached."—Newburgh Journal.*

The will was not admitted to probate; partly on the ground of *monomania, undue influence*, and partly on the fact that the testator entirely disinherited all his relatives, and gave all his property to a Dr. Jones, with whom he had been acquainted only a few months.

XLVIII. George Moore, of Kentucky, made his will in April, 1822, and shortly afterward died. The validity of the will was disputed on the ground of unsoundness of mind in the testator. It was shown that, about twenty-four years before his death, he had a dangerous fever, during which he contracted a strong hatred against his brothers, who he imagined intended to injure or destroy him, although they

had attended him through his illness, and never gave any cause for his suspicion. This antipathy continued until the day of his death, with a single exception, when he made a will in their favor, which he subsequently canceled. The Court, in its decision, said "that he cannot be accounted a free agent in making his will, so far as his relatives are concerned, although free as to the rest of the world. But, however free he may have been as to other objects, the conclusion is irresistible that this peculiar defect of intellect did influence his acts in making his will, and for this cause it ought not to be sustained" ("Little's Reports," 371).

XLIX. The case of Madame Jumel, decided by the Supreme Court of New York, in 1866, is another case in point. This well-known lady died several years since, leaving the bulk of a large estate to various ecclesiastical and charitable institutions, and disinheriting her relatives. This case was brought to trial before the Supreme Court of New York city (1866). It was shown in evidence that the testatrix was very old, and that she was subject to delusions of various kinds; among others, she conceived the idea that several of her relatives were trying to poison her, and she refused to take food which they gave her.

The Court charged that, if the testatrix was of unsound mind on account of these delusions, she was not capable of making a will.

The jury found that she was of unsound mind when she made the will ("Supreme Court Reports," 1866).

L. James C. Johnston, of North Carolina, died in 1865, excluding his natural heirs, by his will, from any participation in his estate, and the whole of his property was devised to persons in no way connected with him, and with whom he had never been intimate. The testator had labored under *monomania* for several years, having occasional paroxysms of delirium, but possessing a good degree of self-control; without any apparent cause, he conceived a violent prejudice against his son and other relatives, toward whom he manifested the utmost hatred. The will was justly considered unnatural and motiveless, the result of delusion and *monomania*, and was

accordingly declared null and void.* "Insanity in its Medico-legal Relations," by William A. Hammond, M.D., New York, 1866; also, "Opinion Relating to the Testamentary Capacity of James C. Johnston, of North Carolina," by the same, 1866.†

LI. The case of Morrison *v.* Smith, "Bradford's Surrogate Reports," vol. iii., p. 209, presents some points worthy of notice in this connection.

The decedent, a short time after the execution of his will, was committed to the lunatic asylum, after an examination by a physician, who found him insane, and laboring under a delusion that some of his children were spurious. He was exceedingly cautious on the subject of the delusion, and careful not to betray it to the examining physician until the latter succeeded in gaining his confidence. He had been melancholy for a length of time, and his depression of spirits had been greatly increased by the recent decease of his wife. Within a few days of the date of the execution of the will, he had become suddenly violent at night, to such an extent as to require physical restraint; and about the same time he gave indications of the delusion in respect to his children. *Held*, that a will made very near the time of these developments, unequal in its provisions, and favoring the only two members of the family privy to it, one of whom was present when the instructions were given, when the draft was submitted, and when the instrument was signed, and both of them had been the decedent's agents, and had possession of his estate, needed more than the formal proof of the *factum;* and, the evidence failing to show affirmatively the soundness of the decedent's mind at the time of the transaction, probate was denied.

The will in question was executed on the 4th or 5th January, 1853; on the 21st of the same month he was committed to the lunatic Asylum at Bloomingdale. Dr. Brown testified that he was laboring under that chronic form of insanity called

* This is an error; the will was sustained by the verdict of an ignorant jury, several of whom could not read or write.—EDITOR.

† Dr. Lee has fallen into the mistake of regarding the two titles mentioned as indicating separate books. The one is a general title of the subject, the other refers to its special application.—EDITOR.

melancholia—a form of disease which does not ordinarily supervene with a violent paroxysm; that his present state of mind (21st January) had existed about five months; that he disavowed the identity of his children, and that he was supposed to indulge suicidal propensities. And yet Dr. Gray and Dr. Kelley, his physicians, who were intimately acquainted with him, the Rev. Mr. Evans, etc., testified to his sanity—Dr. Gray, in a certificate dated January 7, 1853, and Dr. Kelley, in a certificate dated January 6, 1853. The latter states that "the said John Morrison is of sound mind and intellect, and in full possession of all the faculties of reason and intelligence." And Dr. Gray states that "said Morrison is in a sound state of mind and capable of managing his affairs." The Rev. B. Evans visited him on the 4th, 9th, and 16th of January, and discovered no signs of "irrationality."

The Surrogate, Mr. Bradford, very justly remarks, in connection with this case, that "there are cases on record where the subject has for a length of time defied every effort to make him convict himself of irrationality, yet, when the key was discovered, instantaneously disclosed his delusion. So, here, the decedent's cautiousness and craftiness were more than a match for the physician's experience and shrewdness, until the secret spring was found and touched, and then he laid bare his mind." As to the witnesses Drs. Gray and Kelley, and Rev. Mr. Evans, adduced to prove the rationality of the decedent, *their attention was not directed to any special examination of the case.* How little reliance can be placed upon casual observation is illustrated by the fact that, even after the 9th of January, and when the decedent was undoubtedly insane, *the Rev. Mr. Evans spent some time in conversation with him, without discovering any symptoms of derangement* (pp. 113, 225).

LII. In the case of Hopper, already referred to above, Judge Brown, for twenty years an eminent Justice of our Supreme Court, remarked before the Court of Appeals (p. 690):

"If a careful examination of the evidence taken before the Surrogate results in showing that Charles Hopper, upon some

subjects, and indeed generally, had mind and memory, sense sufficient to know and comprehend ordinary transactions, still it will also result that, upon the subject of his wife and his other relations, those who would naturally have been the objects of his care and bounty, and who would have succeeded to his estate, he was a maniac, given to the grossest insane delusions. The instrument proposed cannot be regarded as his will, because upon such a subject he was incapable of expressing or forming an intelligent will. It is the result, not of a clear, unclouded intellect, having an intelligent comprehension of the relation of the things with which he had to deal, but the result of a delusion which controls the judgment and misleads the understanding in relation to the subjects on which it is acting. A monomaniac may make a valid will when its provisions have no connection with the particular delusion, and there is no reason to think they are influenced by it. But when, as in this case, the delusion relates to the persons who would, in the natural and usual course of things, become the objects of the maker's care, solicitude, and bounty, and, especially, upon whom the law would cast the inheritance of his property, the instrument must be regarded as invalid to pass the estate, because it does not express the will of a testator of sound and disposing mind."

LIII. These cases could be multiplied, if there were any necessity for so doing. In regard to *criminal cases*, where insanity, characterized by *delusion*, has existed, Chief-Justice Shaw, of Massachusetts, has clearly laid down the law in the case of Rogers, who was tried for murdering his keeper in the State Prison (*American Law Journal*, No. 3, 128, N. S.).

"The conduct may be in many respects regular, the mind acute, and the conduct apparently governed by rules of propriety, and, at the same time, there may be *insane delusion*, by which the mind is perverted. The most common of these cases is that of *monomania*, when the mind broods over one idea, and cannot be reasoned out of it. This may operate as the excuse for a criminal act in one or two modes: 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 killed him in supposed self-defense."

And "secondly, where some violent outburst occurs, which, taken in connection with former acts, indicates that the will was overborne. The questions for them to decide were, whether such a delusion existed in the mind of the accused; whether he did not act under an insane but firm belief that the deceased was going to shut him up with some dangerous design, or not for a slight punishment; whether the facts indicate that the deed was done at a moment when the delusion was uncontrollable."

The same principles were laid down by the Superior Court of Connecticut, in the case of Abbott, indicted for killing his wife in 1841; also by the court on the trial of Mercer for the murder of Heberton, in New Jersey, April, 1843. (In some of the recent trials of murder, some new principles of medical jurisprudence have been laid down, if not by courts, by lawyers and juries; as in the case of Cole, who was declared to have been sane the moment before the act was committed, as well as the moment afterward; but that he was utterly insane when he committed the murderous act, and on this principle he was acquitted.)

(After repeated sittings of the court, continued from time to time through a period of nine months, the will was declared invalid, on the ground of the insanity of the testator.)

DOES THE LAW DEAL UNFAIRLY

WITH

QUESTIONS OF INSANITY?

By J. V. CAMPBELL.

Lawyers are proverbial for doing most of their quarreling vicariously, and for letting assaults upon their profession, and mistakes concerning its general conduct, vindicate or correct themselves. And hence there are many fallacies afloat, concerning the manner in which certain topics are treated by the bar and by courts; some of which mislead the whole community, and some are favorite grievances of but a part of it. There is no subject on which there has been less real appreciation, or more indiscriminate censure, on the part of some writers, than the supposed treatment of insanity by legal authorities, and the alleged disregard of the favorite novelties of some psychologists. Inasmuch as the only way in which the rights and liabilities of men are enforced at all is by means of legal proceedings, it would be singular if lawyers and judges should not aim at being informed on such subjects; and it may not be too much to suggest that their habits and opportunities might be expected to keep them reasonably well informed concerning the manifestations of human conduct. If it would be irrational for them to disregard any genuine light on such matters, it is for the same reason irrational to make sweeping accusations of neglect, or

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obstinacy in shutting their eyes to that light. Many of these charges and complaints are the result of ignorance concerning the law's dealings.

It is true, that in the course of justice no great regard is paid to the nice distinctions between various kinds of mental incapacity. There is no occasion for doing so, because each case must always stand on its own facts, and one decision upon a question of fact can never be a precedent for another. When the question arises whether, in the given case, the mental condition of any person is or was such as to lead to a particular conclusion, it is of no special consequence how the abnormal state is named, if full weight is given to its qualifying force.

One of the principal difficulties we meet, in the practical treatment of these subjects, is the confounding together of mental incapacity for certain legal purposes, and mental unsoundness in a more absolute sense. Witnesses called upon the stand to testify concerning capacity, often take it upon themselves to disregard all but the inquiry whether idiocy or insanity exists in the case on trial, when there is no occasion whatever to examine into either of these conditions.

There are two classes of inquiries under which most investigations into mental conditions may be ranged:

First.—Questions of civil competency.

Second.—Questions of criminal capacity.

The sanity of witnesses so rarely comes in question as to give rise to no serious difficulty.

Questions of civil competency may arise, not only where the person concerning whom inquiry is made is supposed to be idiotic or crazy, but also where his faculties, physical as well as mental, are so weakened by disease, or pain, or drugs, as to render him unfit for any business requiring thought and steady attention. Unfitness for many civil acts may exist, wherever there is not strength enough to enable a person to act, at the time and under the circumstances, as a free agent, or active intelligence enough to comprehend the particular business in hand; although there may be other acts, where no urgency or compulsion operates against free agency, or simpler deal-

ings entirely within his comprehension, where his competency would not be disputed. In other words, some acts may be valid and binding, and others not—though substantially contemporaneous—because the former are simple and spontaneous, and the latter are more complex, or result from such influences as may overcome a feeble person, while one in full vigor would not yield to them.

It is quite plain that any attempt to confine inquiries in civil matters to mental unsoundness, in its general and absolute forms, would leave out a large class of most important cases, relating to wills and contracts, where, with no complete incapacity for every purpose, there may be an unfitness under surrounding circumstances to do the act in question.

Courts have not generally held that such qualified incapacity must necessarily require the testimony of scientific witnesses or experts. It happens, however, in many such cases, that the person whose acts are in question has been laboring under disease, and subjected to medical treatment. Then, of course, his attending physician may render the most valuable services by giving the results of his careful investigation. But in other cases, and to some extent in these, the capacity to do certain acts, under the circumstances, must usually be as easily determined by other intelligent persons as by the scientific. And when experts are questioned, they are too often led to answer concerning the existence of general unsoundness —which they can see does not exist—when, had their attention been called to the ability of the patient, in his weak or nervous state, to do the complicated and important business under consideration, they would have shown that he could not have done it freely or intelligently.

It is also a very common thing for persons advanced in life, or cut off from close family ties, to be beset by interested and insidious parasites, who wish to influence them in making their last wills, and yet have sagacity enough to know that their influence must be kept concealed. A time arrives when pain seems to have become quieted, and the mind appears more than usually tranquil, as if unconscious of the burdens of the suffering flesh. During this interval of apparent clearness

and freedom from disturbing influences, wills are often made, utterly at variance with all antecedent probabilities, ignoring known attachments, and sometimes violating the most obvious social duties. But, so far as it can be shown, there has been no undue solicitation; and, on the trial, the witnesses usually declare the testator's mind to have been sound, and his intelligence clear. The will is therefore almost uniformly sustained as the deliberate act of a person in full mental vigor, who must be presumed to have had good reasons for his peculiar disposal of that which he had a full right to control. Such cases are frequent enough to cause much speculation at the bar; but the general result has been so uniform, that few lawyers, however convinced of the real character of the testamentary document, advise their clients to carry the litigation beyond the decision of the Court of Probate.

Every one who has had to do with such cases, must feel that many of them can only be accounted for on the hypothesis that there are forms of disordered action which are quite apt to escape detection. Such deviations from all ordinary standards of sanity deserve more attention than any of the text-writers have yet given them. And they exemplify the evils of neglecting close observation, merely because there is no necessity for active medical treatment. For there have been instances brought to the knowledge of many legal practitioners, where the mind of the sick man had so completely followed that of some one who had assumed to record his wishes, that he appears to have done spontaneously and readily, if not actively, what was never in fact suggested by himself. And the very precautions used to make his condition easier, have beyond doubt enabled many frauds to be consummated in perfect security.

When such cases come up in courts, it is commonly impossible to obtain any full or satisfactory testimony. The sick person is not allowed to be disturbed by needless conversation; and none of those tests are permitted to be applied, which are resorted to in other cases to determine the mental condition. It rarely happens that any attempt is made to try the soundness of the sick man's memory, even concerning the

very matters in hand. And in many instances the testamentary proceedings are conducted in such a private and ostensibly confidential way, that the person conducting them may, if dishonestly disposed, do very much as he pleases without any danger of detection.

The developments in court often show that at such times the testator appears almost or altogether passive; exhibits no strong marks of love or dislike; manifests no special anxiety about his affairs; and shows no concern about death. The apathy extends to all subjects. The miser forgets his avarice, the ties of kindred are not felt, and ambition ceases to regard honors and position. Men who in health were noted for punctilious prudence in all their affairs, make their wills merely because somebody suggested it, and seem to have no care or zeal in the matter themselves. How far wills made under such circumstances can be said to emanate from the testators, or how much they have had to do with the preparation, can never be discovered, except through the medium of witnesses whose disclosures of facts discrediting the instruments would operate to their own condemnation.

When persons in apparent health become rapidly and unaccountably changed in nature and disposition, so as to lose their prominent characteristics, there are means of determining, without much difficulty, how far the change denotes insanity. It is certainly worthy of consideration, how far persons who, having apparent control over their faculties, manifest a similar change during the quiet and calm decline of mortal weakness, are really in a fit condition to dispose of their affairs, when they show no interest in the present or future of themselves or others, and when, if left alone, they would have made no testamentary arrangements at all.

It often appears on the trial of contested wills, that a testator, who has never during health signed a paper without careful personal inspection, has omitted (although perfectly able to do so) to attempt any personal reading or examination of the document presented for his signature. Such persons often sign these instruments, disposing of all their affairs, upon a single reading of the draughtsman, and on the first draught,

without inquiry, suggestion, or amendment. And it also comes out, by no means seldom, that, although living for some time after the signing, and retaining their faculties apparently unchanged, they make no further allusions to their wills; and do not seem to reflect upon them, to see whether there may not have been errors or omissions, and never seek to read them or hear them read. The paper drawn and presented is signed without parley or discussion, and then dismissed from thought as if of no consequence whatever.

The death of most of these persons, within a brief period, renders it impossible to determine whether the appearances of capacity were reliable or delusive. But sometimes there is a recovery or amendment entirely unlooked for. In these rare instances it certainly has happened (and no one can tell how often), that the testator has had no recollection of having made any will at all; or has had an erroneous idea of the tenor of that of which he retains a partial recollection. A case is mentioned of a gentleman supposed to be hopelessly ill, who of his own accord sent for his solicitor, and deliberately dictated and then executed a will, without the least suspicion in his nurses, medical attendant, family, or lawyer, that he was in any degree incapable of acting discreetly. But after his recovery, upon accidentally finding this will in his desk, he would not believe that he had made it, as he had no recollection of it, and it was contrary to his settled intentions. Had he died without finding it, no one would have disputed it, as it was supposed to have been so carefully and reflectively settled upon as to preclude any possible chance for doubting its correctness. And in this case the thing was not done in a corner. Every one supposed him to be in the full enjoyment of his faculties. Sir Henry Halford mentions a very similar occurrence, where he detected the insanity after the will was executed, although he failed to do so before.

The disposition of all tribunals is to sustain wills if possible; and there is no doubt that very many are upheld which should not be. As all courts and juries must base their action upon the proofs before them, and as in most of these cases, and in probably all that are sharply contested, these proofs

are largely furnished by scientific witnesses, the defects in justice are not chargeable to the law, but are chiefly due to imperfect observation, and to the erroneous inferences drawn by the observers.

In many instances where death appears to be imminent and inevitable, and no further professional aid is available, the duties of medical men may call them elsewhere; and it is assumed that there is no occasion for continued critical observation by any one. But unhappy experience has shown that mental irregularities will baffle anything but the closest scrutiny, and are often detected by subsequent conduct, when not suspected at the moment. And when the peace and security of families may depend upon the state of mind of a testator, the materials for arriving at a true result should be sought with the most conscientious and impartial care.

While writers on medical jurisprudence have spent much time and done good service in explaining the phenomena of mental disorders, there is very little intelligent discussion concerning the effect of sickness and bodily decay in operating on the will, the attention, or the active understanding. And there is seldom any more than an allusion to those quieter forms of delirium, which are so deceptive to an ordinary observer as not to excite his attention at the time, and which may not be noticed at all, unless subsequent conduct leads to a recollection of inconsistencies, only to be explained as the result of aberrations.

Until more attention is given to these very perplexing cases, we must continue to have a multitude of controversies, in which neither gainer nor loser will ever be clear in his own mind upon the justice of the legal decision made, and upon which the community will never come to a final agreement. The law must always be powerless where testimony is not such as to command confidence. There can be no well-settled popular knowledge upon the tendencies of different diseases or injures to affect unfavorably the power to conduct the affairs of life, and to render persons, though not insane, very liable to mistake, forgetfulness, fraud, or imposition. Yet there must be many cases where, under peculiar circum-

stances, these tendencies may be quite worthy of consideration. Where there is actual fraud, the power of the victim to detect and resist imposition can never be an unimportant element in the transaction. Where there is no suspicion of misconduct, the law can pay little heed to mere differences in intelligence, and will not enter on unprofitable discussions among men whose full natural capacity remains. But where this has been impaired in any way, there may often be room for scrutiny. We may fairly presume that medical men have not failed to notice any of the phases of disease; but those who have attempted to write for the instruction of other professions, have rarely thrown much light upon any mental disturbance, or weakness, short of imbecility or actual aberration.

It is somewhat singular that in the popular mind, and to a great extent among learned men, questions of mental condition are usually supposed to refer to criminal responsibility. And more complaint has been made of the operation of supposed legal rules in this direction, than when they apply to civil transactions. It is very often said, by persons regarding themselves as experts on mental disorders, that courts ignore some classes of insanity, and hold men chargeable who should not be deemed capable of criminal responsibility. If there be any such rules of law they are certainly wrong. But, when we look at the facts, it will be found the administration of justice is not so imperfect as is supposed. Every one familiar with practice knows that, while many civil acts are sustained when they should be set aside, insane persons are not very often convicted, and comparatively few really guilty persons are acquitted as insane. There are some cases of homicide where juries strain for an acquittal, and where a very small amount of evidence, bearing on the sanity of the prisoner, has ostensibly furnished the grounds of his discharge. But no one really imagines that the jury believed him insane. When the popular feeling excuses the homicide, the sympathy of a jury will lay hold of any pretext for mercy. The law is not responsible for this; and the finding of a jury can never, in criminal cases, be regarded as creating or perpetuating

any legal rule. It is the facts and not the law that in these anomalous cases must be bent to meet the occasion.

It is true that cases have arisen in times past, and sometimes arise now, when really insane persons have been punished. But a careful investigation of these will usually show the verdict to have been fully up to the current opinion on the subject, and not to have startled professional men or people generally. Indeed, it is very well known that Lord Erskine, when at the bar, did more to elucidate the whole subject of insanity, in its bearings on crime, than had then been done by any professional writer to whose works the public at large had access. Juries are always at liberty to acquit upon any proof in the case that comes home to their consciences, and they rarely lean against any merciful view which is made to appear reasonable to them. If they disregard evidence of insanity, it is only because it is contradicted, or plainly unreliable; and no sensible man can properly be asked to believe what the evidence on which he is called to act does not convince him of. Nor can it be justly regarded as a fault, in courts or juries, not to be in advance of the age in which they live. But a very small portion of the ideas which conflict with the general sense of the community are indicated by the future as genuine advancements in knowledge; and the administration of justice would soon fall into contempt, if every new theory that is broached should be followed before it is proved. *Ex post facto* wisdom is a very cheap and worthless commodity, and he is a very fortunate prophet indeed, the tithe of whose predictions are verified by results.

Great fault has been found with the rules laid down by some of the old law-writers on the subject of insanity. If taken as the sum and limit of the knowledge applied in their day, there would be reason to criticise them, although it might then be said with equal force that they were not at all behind the medical science of their time. The great lawyers of the sixteenth and seventeenth centuries were behind none of their contemporaries in science. But when they laid down principles or rules to be applied in legal trials, they are not to be understood as attempting to exhaust the subject. Lord Hale's

celebrated canon, that no person of less understanding than an ordinary child of fourteen should be held responsible, has been a favorite subject of criticism with some writers. But they have grossly misapprehended him, when they supposed he regarded that bald statement as an universal test. He had been very cautious in his remarks previously, and had dwelt upon the difficulty of defining the line between responsibility and irresponsibility, and the necessity of guarding against inhumanity on the one hand, and too great an indulgence to great crimes on the other. And when he says the best measure he can think of is the one referred to, it is evident from the whole context that he means, by taking the age of fourteen instead of the ordinary condition of men, to give an illustration broad enough to include all those cases of immaturity, as well as of obliquity of judgment, which render persons *non compotes* in the eye of the law, and not to make mere maturity of intellect alone the test. The cases he refers to negative any such idea. And the term "understanding," which he used, was then, as it has often since been, applied to include all the mental conditions, and not merely intellectual progress. There is certainly some felicity in his illustration as applied to some cases; for the reason why children are held irresponsible, is not because of any lack of intellect, or sense of right or wrong, but because their judgments are imperfect, and they lack the power of completely appreciating their responsibilities. No one would think of trusting them with the management of their own affairs at an early age, or of judging them as adults are judged. The brightest school-boy, superior as he is in learning and acquired knowledge to an uneducated person of very ordinary intellect, is not regarded as liable to the same censure for misconduct. The immature mind lacks balance, and a man who does not fail in intellect, and yet ordinarily acts with no more judgment than a young child, and can not do better, could not properly be held sane. Childishness is a very common indication of insanity; and while the latter varies indefinitely in the modes of its manifestation, the poverty of language makes it difficult to furnish any term which will cover all of its phases. Fortunately the law, as

already intimated, need not be precise in this matter; for juries are not, by sensible judges, charged in technical phrases on any subject; and every case stands upon its own facts, and upon their peculiar significance. Different as are their positions and capacities, the insane are nevertheless held exempt from punishment, as children are held exempt, simply because they are unable, to realize their responsibilities and govern their conduct accordingly. And although the inability may and does come from different causes, and exists in different degrees, it is nevertheless the inability that excuses in both whenever it appears.

It may be remarked, in passing, that the same fallacy has been resorted to in attempting to determine when this freedom of both from responsibility ceases, and has done infinitely more mischief in the case of children than in that of the insane. It has too often been said that a knowledge that a thing is wrong involves legal guilt and legal responsibility; and many unfortunate children have been punished as criminals on this wickedly absurd dogma. A child knows most crimes to be wrong—unless he is grievously neglected or very stupid—at a very early age indeed, and certainly before he is seven years old. Yet we all know that a child of fourteen, with the judgment of a very ordinary man, must be precocious in the extreme, if such precocity is possible at all. The pseudo-philanthropy which has been so busy in building children's prisons, and shutting up for longer periods than would be allotted to burglars and robbers those who ought not to be held to any legal responsibility at all, is a nearer approach to barbarism than can be feared from any possible treatment of those who are supposed to have unjustly lost the exemption due to insanity.

The use of such an illustration by Lord Hale is to be understood, like all other legal remarks, as confined where it belongs; for, as already hinted, courts do not instruct juries by theoretical or technical statements. And there is no reason to believe that any jury has ever been misled by the abuse of this supposed rule. No such case has got into the books, and none is referred to by authors on medical jurisprudence.

In this connection it is to be remarked, that many writers seem to forget that insanity is no new thing, and that the various freaks which it occasions have been as common for centuries as they are now. Undoubtedly our well-regulated insane asylums have enabled much light to be thrown on the more obscure causes of aberration; but even here there is reason to believe we have not always given credit to the past for its real knowlege. Human nature is the same everywhere, and the metaphysicians and philosophers of old were as acute as any of our fellows. Solomon was wiser than Buckle, and Plato than the small philosophers who hash up his cold fragments. Dr. Bucknill has shown that Shakspeare had not only noted every variety of mental disease (which he might have done without recognizing its true character), but appreciated it, and was not unlearned as to its treatment. Sir Henry Halford, one of the most accomplished of all men in this field, not only acknowledged his obligation to Shakspeare for hints which enabled him to detect insanity where he had not been able to do so without them, but by his familiarity with the elegant learning of the ancient classics, was enabled to find similar clearness and accuracy in their delineations of madness. Dr. Johnson said of Goldsmith that if he went to China, and found a wheelbarrow there, he would fetch it home as a novelty. Our generation is a wise one, but the finding of mare's nests is not peculiar to any age of civilization. The course of the Nile is not the only discovery which has been made more than once.

Too much stress is laid upon wrong verdicts, as indicating mistaken views. As already stated, an acquittal is often really had on different grounds, when this defense has been set up. But verdicts of acquittal or conviction are seldom given without the best evidence accessible, and in the doubtful cases, the result of which is oftenest criticised, there has usually been skilled evidence on both sides, and the conflict has been professional. But criticism on litigated facts can never be made with entire confidence by any one who has not been present through the trial. The entire testimony can never be reproduced as it appeared there. Even a steno-

graphic record of it will not present the witnesses themselves to view, nor can any process explain how much testimony was thrown out by a juror as not convincing to his mind. And in many cases the appearance of the prisoner himself, which may be of great service in applying such testimony, is not to be supplied by any description. The case criticised may be a very different thing from the case decided. The contradictions of experts are among the most serious obstacles met with in the administration of justice. Nor in these cases is it school against school, but brethren in belief are as wide apart as others. And when we remember the time spent in proving that Hamlet was insane, and that he never was insane, we may fairly acquit the law of any serious responsibility in cases where the doctors differ. *Non nostri tantas componere lites.* There is one circumstance generally lost sight of in discussing erroneous acquittals. In most of our States, as in England, it is provided by law that when an acquittal is on the ground of insanity, it shall be so stated, in order that care may be taken for the safe custody of the lunatic. But acquittals based on this express ground are almost unknown. The accused gets off on the benefit of miscellaneous doubts; and insanity is but a makeweight, and not the absolute occasion of his discharge. When Oxford was acquitted on the express ground of insanity, on an indictment for the capital offense of shooting at the Queen, the English Parliament, with rare good sense, cut off a whole possible crop of such lunacies, by removing the melodramatic element from the crime, and making such attempts punishable by whipping; since which that form of insanity has not appeared. And the acquitted lunatic himself is said to have suggested in his own case that whipping would have been the proper remedy, instead of a trial for a state offense.

It is a mistake to suppose that the law has ever undertaken to lay down rules as to what shall be considered as insanity. It holds no one guilty whose acts are not those of a responsible agent, and shuts out no proof which can possibly throw light on the state of the accused. Any person who is found in the unhappy condition of one whose conduct is not under his control, is held unfortunate and not criminal. The only

attempt ever made to elicit rules for the instruction of juries on the subject of insanity, was made by the House of Lords, after the trial and acquittal of McNaughton, who was indicted for the homicide of Mr. Drummond, whom he had mistaken for Sir Robert Peel. The insanity of that prisoner was genuine; but the frequency of the defense had created some uneasiness, and the judges were asked to explain how the subject should be dealt with on trial. Those who gave replies, did it with the explanation that until a case was presented requiring instructions on its own circumstances, there could be no safety in laying down rules at all; and no one could be expected to act upon abstract propositions which might not bear the test of experience. The rules they laid down exemplified the wisdom of their caution, and were so unsatisfactory that they have never been received without material allowance. When a judge is called upon to charge a jury in the presence of the evidence on which they are to act, there is much less danger of mistake; and inasmuch as the facts are entirely in the hands of the jury, and the existence of insanity is purely matter of fact, the chances of their being misled by any supposed legal rules are reduced to a *minimum*. Errors will occur, but it is not easy to see how any course can be found whereby they can be entirely avoided. There are very few cases, indeed, where the existence of insanity is not, upon the evidence, a question of plain common sense. Nor can there be very many instances where any rule not intelligible to common minds would be safe or even tolerable. The evils which would ensue from destroying the functions of any tribunal, by compelling or allowing it to act without reference to its own understanding, would be worse than anything that could be imagined as likely to flow from possible mistakes on the sanity of those who differ from their sane neighbors in no perceptible degree. In all human affairs appearances are facts, and we must act upon them. And if one appears sane, so far as any intelligible tests can discover, his insanity is fully as improbable as that of any one else who believes in it, without being able to justify the belief.

It has sometimes been charged that courts are in the habit

of rejecting the idea of moral insanity. But this notion is entirely unfounded. If a person is not able to subject his conduct to the control of reason, no court has ever distinguished between the insanity which manifests itself in a subversion of the moral qualities, or the affections, and that which appears chiefly in the form of disordered intellect. Judges as well as physicians have questioned whether insanity of any kind did not render the whole being unreliable, and subject to eccentric and disordered action. But no one has ever rejected any form of insanity.

There is certainly no great leaning among courts towards accounting for every species of gross misconduct, on the theory that it is insanity which should make its perpetrator irresponsible. And it is thought by many if not most jurists, that, in the absence of any perceptible disease, there is nothing to take such moral obliquities out of the field of common experience into that of psychological science. When the question before a jury is, whether a given act is voluntary or involuntary, the result of wickedness or of some uncontrollable impulse without aim or motive, there is not usually much room for scientific teaching. Yet even here the law is not dogmatic, and allows experts to give any light in their power; and if their experience or observation can really aid the decision, it will have all the force which the appearance and capacity of the witnesses command. Even the startling theory of instantaneous and momentary insanity, lasting just long enough to commit a crime, and never appearing before or after, has not been shut out, and those whose enlightened consciences, or whatever may have stood in the room of conscience, ventured to receive it, were not compelled to reject it. No one doubts that absence of motive may leave no other explanation for an act than that it was the act of a madman. But if a shoulder-hitting bully should, without any cause, assail a stranger, we should have as little hesitation in laying it to his wicked brutality. The general disposition to do mischief without adequate cause is usually recognized as malice, and not insanity, and society would not be materially benefited by entirely rejecting the old definition. When the cir-

cumstances all come out, the nature of the act will be discovered by means of them, but not without. There have been acquittals in all ages, where moral insanity has been recognized as a sufficient excuse. But when it is attempted to make sensible men believe that wanton rascality is misfortune, they are justly incredulous. Volumes of dissertations would not persuade us that when a man had for years consistently swindled others, and never blundered into a mistake against himself, he can find any treatment for his unhealthy mind more desirable than the quiet air and orderly life of a State prison. And it has rarely been found that when he has been sent there the decision was unfortunate.

And yet the field is open. If such doctrine is unsound, and if insanity should be so far extended as to include even most of our normal acts, the law will admit the evidence for what it is worth. If the expert can convert judge and jury, there is no law to prevent their conversion in any given case. There is nothing to save the law but the common sense of its ministers, and it makes no provision for saving them from the seductive tongue of the psychologist. It does not even confine theorizing, although perhaps it should, to those who have had personal experience in treating insanity, and who may be deemed, therefore, worthy of credence. It has no nice scales for weighing men of science, whether truly or falsely so called; and each one who has assumed the learned robes, may take the stand and approve himself wise or otherwise by his testimony.

If there is any ground for complaint, therefore, it is not that the law excludes truth or theory, but that it does not exclude humbug and ignorance. It is better that the doors should be left open, for experience will rectify errors, and may profit by discoveries. But no complaint is more groundless than that insanity, of whatever nature, cannot be allowed for sufficiently in any court of justice.

THE PLEA OF INSANITY

IN

CRIMINAL CASES.

By JAMES J. O'DEA, M.D., of New York.*

Title vii., § 2, of the Revised Statutes of the State of New York, enacts as follows: "No act done by a person in a state of insanity can be punished as an offence; and no insane person can be tried, sentenced to any punishment, or punished for any crime or offence, while he continues in that state."

What is to become of the practical efficacy of our laws, if sane criminals, aided by counsel and encouraged by the prevalent weak humanitarian sentiment, can escape the just punishment of their crimes by taking refuge in the plea of insanity? Is not the increasing tendency to this action an offence against the fundamental principles of social and political life?

To such, indeed, as can be influenced by the inflated language of Lord Brougham, recently quoted to a jury by Recorder Hackett, that "an advocate, in the discharge of his duty, knows but one person, and that person his client;" that to save him, he "must not regard the alarm, the torments, the distraction which he may bring upon others;" and that, "separating the duty of a patriot from that of an advocate, he must go on, reckless of consequences, though it should be

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his unhappy fate to involve his country in confusion;" to those, I say, who subscribe to such doctrine as this, the false assertion of the plea of insanity in criminal cases can be only a venial offence, if any offence at all.

But I hope such is not a part of the morality of the eminent legal profession of this great city. Deplorable, indeed, would be the result to the interests of our social fabric if this opinion of Lord Brougham's should have the effect of encouraging legal men to introduce the serious and important plea of insanity into criminal trials as a piece of mere legal strategy; for they would therein conspire to defeat the only legitimate end of practical jurisprudence, namely, the assertion of law in the interest of the common weal, by the punishment of crime. It is as hostile to this end to permit a sane criminal to escape beneath a false plea of insanity as it would be to punish an insane person regardless of the degree of his mental alienation.

Two recent criminal trials—those of Cole and McFarland—have drawn public attention to the plea of insanity. Reasonably or unreasonably, there is a widespread suspicion that it has been used in these trials as a means of sheltering two criminals from the consequences of their great crimes. Such a suspicion is in no way novel or peculiar to our own country. One, in many respects similar, pervaded England, about thirty years ago, after the trial of Oxford for firing at the Queen, and of McNaughton, for killing Mr. Drummond, secretary to Sir Robert Peel; and though, possibly, it may be as groundless here as events proved it to have been there, its wide diffusion in this country demands serious reflection, and is a sufficient reason for the inquiry to which I will now proceed to draw your attention.

But, first, I wish to prevent misapprehension of the scope and object of this paper, by stating at once that its purpose is to deal chiefly with the following points of the plea of insanity:

1. The close resemblance between the extreme of anger and a temporary fit of emotional insanity.

2. The means proposed to juries for distinguishing between these resembling states.

3. The reforms which may be urged to guard the plea of insanity from abuse.

I purposely avoid any direct reference to the evidence on which McFarland was pronounced insane, because, though not convinced of its sufficiency, I believe the reopening of the subject would only serve the vicious purpose of prolonging a discussion conducted from the beginning in an unkind, unjust, and partisan spirit. The press and public of this country will, doubtless, learn to discuss important social problems on their own merits. I trust that the time is at hand when the bitter partisan spirit is to be as successfully eliminated from social and political as it has been from scientific discussion.

A brief historical outline of the subject will not be out of place.

The method used by courts of law to determine the existence of insanity in a given case has made little advance since the time of Lord Hale, more than a hundred years ago. He admitted a distinction between partial and total madness, but disallowed that the former constituted any exemption from legal punishment. To him, and to the juries of his time, it seemed clear that such immunity could be granted to those only who were "totally deprived of understanding and memory."

Not only was this view scientifically incorrect, it was inadequate to meet the requirements of particular cases. The consequence was that many people suffered the extreme penalty of the law, who, in our own day, would be acquitted on the ground of insanity. Among such was one Arnold, whose attempt to assassinate Lord Onslow created a great excitement at the time. The evidence at the trial was conclusive as to his insanity. It was proved that he had led a strange, solitary kind of a life for many years; that he was beset by the delusion that Lord Onslow sent devils into his resting-place at night, who "constantly plagued and bewitched him . . . so that he could neither eat, drink, nor sleep." But because these and similar facts failed to establish that he was "totally deprived of his understanding and memory," he was not pronounced insane by the court.

Some time later it became evident that there was a species of madness which did not involve the *whole* mental powers. It was conceded, for example, that the monomaniac might be as insane in his way as the maniac; and it was ruled that, if the alleged crime had been committed under the influence of an insane delusion, *and its connection with this delusion were established,* the accused should be held to be irresponsible.

But, simultaneously with this advance, we note an unfortunate concession to the old conception of insanity in the judgment of the court at the trial of Hadfield. It was there declared that the delusion *must be of such a nature as to justify the criminal act.*

Chief-Justice Shaw, of the Supreme Court of Massachusetts, repeated this interpretation in the following words spoken at the trial of Rogers for the murder of Charles Lincoln, Jr.: "The delusion must be 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"—a decision according to which an acquittal would depend, not on the causative relation between the delusion and the act, but on the mere character of the delusion itself.

Many writers have dissented from so specious a judgment. With his usual lucidity, Dr. Ray has shown how a delusion may acquire ascendency over the mind of the monomaniac sufficient to influence his whole conduct; how an imaginary insult, which would be trifling if real, assumes in the insane mind a significance altogether unbearable. "When a person," he remarks, "is so insane as to imagine that another is disturbing his peace by spells and incantations, is it strange that, at the same time, his notions of right or wrong should be so confused that he thinks himself justified in sacrificing his disturber?"

Aside from this error, however, the trial of Hadfield, which took place in 1800, marks an important advance in the science of criminal jurisprudence. He was indicted on a charge of high treason, for firing on George III., in Drury Lane Theater. A soldier by profession, he had been dismissed from the army for insanity supposed to have been caused by severe wounds

received in battle. His mental derangement was of an intermitting character, the exacerbations occurring in the spring and summer. During these seasons he had extravagant ideas, and among others the predominant one that he was the Saviour of the world. For some days previous to his attempt to kill the king, he was unusually violent, threatening even to dash out his child's brains in obedience to a fancied command from Heaven. Being in the theater when the king entered, he rose with the crowd, took deliberate aim at the royal person, and fired. When put under arrest, his conduct was calm and deliberate. He did not deny the act, but excused it by saying that having long desired death, and being unwilling to commit suicide, he sought by killing the king to have his wish gratified. At the ensuing trial, his counsel, Lord Erskine, who ably defended him, laid down the following propositions, the court assenting:

1. That it is the reason of a man which makes him accountable for his acts, and that, without the use of his reason, he cannot be held guilty of crime.

2. That it is unnecessary that reason should be *entirely* subverted.

3. That a *total* loss of memory and reason is not required to constitute insanity.

4. That where hallucinations are proved to exist, the deed for which the accused is put upon trial must be the immediate offspring either of the hallucination, or of the disease of which the hallucination is a symptom.

Twelve years later, on the trial of Bellingham for the assassination of Mr. Spencer Percival, Prime-Minister of England, a new legal test of insanity was introduced. The presiding judge, Lord Mansfield, explained that the question for the jury to decide was, whether the accused had sufficient understanding to distinguish good from evil, right from wrong.

Thus a new test was established. And, despite the fact that, twelve years previous, the fallacy of the "right and wrong" test had been ably exposed by Lord Erskine, it has ever since been the gauge of an insane act. I will specify a few of the many authorities who, since then, have unreservedly

adopted this test. Mr. Chitty, in his "Medical Jurisprudence," p. 354, writes: "In practice, to prevent the jury being embarrassed by any technicalities respecting the import of this term insane, the substantial question presented to the jury in this and all cases, whether of alleged idiocy, lunacy or insanity, either in general or monomania (that is, delusion confined to a particular subject), is, whether, at the time the alleged criminal act was committed, the prisoner was incapable of judging between right and wrong, and did not *then know* he was committing an offence against the laws of God and Nature?"

In the case Rex *v.* Oxford, Lord Lyndhurst charged that the question for the jury to decide in reference to the prisoner's alleged insanity was, "Did he know that he was committing an offence against the laws of God and Nature?"

In the case of Abbot, tried before the Superior Court of Connecticut, for the murder of his wife, in 1841, the same test was recommended to the jury. Finally, not to weary you by too many parallel cases, the same tests were substantially recommended to the juries who tried Cole for the murder of Hiscock, and McFarland for the murder of Richardson. "I will restate," said Judge Hogeboom, "that the foundation of all responsibility for crime is sanity or soundness of mind, that is, a sane mind in the sense in which I explained it to you in the original charge—the possession of reason, ability to discriminate between right and wrong in regard to the particular transaction, a degree of consciousness and intelligence that enables a party to appreciate the quality and nature of the act in which he is engaged." . . . .

"In using the phrase 'state of insanity,'" said Recorder Hackett, "I am to be understood throughout as meaning, thereby, the state under which a man is not accountable for an alleged criminal act, because he does not know that the act he is committing is unlawful and morally wrong, and has not reason sufficient to apply such knowledge and to be controlled by it."

I.

From this brief historical outline of the plea of insanity, let me pass at once to the subject matter in hand.

A law is a command set by a political superior to a person or persons in a state of habitual subjection to its author.* All such persons, not of unsound mind, and not below the age of discretion, are subject to the law and are amenable to the sanction or punishment entailed by its violation. This rule includes even those who violate a law through ignorance of its existence, it being necessary that the State should assume all its subjects who are sane and mature to have knowledge of the law.

There is therefore one class of the community not amenable to law—the insane.

Regarding the insane from a medico-legal point of view, in relation to their legal responsibility, I would divide them into the following classes:

1. Idiots and the demented.
2. Maniacs affected in their intellects wholly or partially.
3. Maniacs affected in their emotions wholly or partially.

This division is merely intended to serve the purpose of the present inquiry. I acknowledge the evil of arbitrary distinctions, and fully indorse the wise words of Dr. Maudsley, that "there is a strong tendency not only to make divisions in knowledge where there are none in nature, and then to impose the divisions on nature, making the reality thus conformable to the idea, but to go further than that, and to convert the generalizations from observation into positive entities, and then to permit these creations to tyrannize over the thoughts. A typical case of madness might be described as one in which the disorder, commencing in emotional disturbance and eccentricities of action—in derangement of the effective life—passes

* "Lectures on Jurisprudence, or the Philosophy of Positive Law," by the late John Austin, of the Inner Temple, Barrister-at Law. London, John Murray, 1869.

thence into melancholia or mania, and, finally, by a further declension, into dementia. The necessity of describing different forms of insanity under different names should never lead to a neglect of the real relations which they have to one another, as different stages of deviation from that mental life which we agree to regard as ideal or typical." *

The first of the groups just given, and so much of the second as includes maniacs affected in their whole intellects, are manifestly within the provisions of the statute for the insane. Their features are so plainly marked that a jury can have very little difficulty in determining their irresponsibility. From the medical point of view, also, there can be little or no hesitation in their diagnosis. The law, therefore, being known and the fact determined, the application of the former to the latter is easy. But we encounter our first difficulty when we have to deal with alleged criminals, who are declared to be afflicted with partial intellectual or with emotional insanity. For, at the very outset, there is a discordance of opinion on this subject between law and medicine. Courts of law and jurists, as a class, regard the whole subject of moral or emotional insanity with disfavor. Here, I think, legal prejudice is at fault. But whatever the explanation may be, the fact remains that, as Judge Edmonds said on the trial of Kline for murder, in May, 1845, "The law, in its slow and cautious progress, still lags far behind the advance of true knowledge."

In his charge to the jury who tried this case, Judge Edmonds remarked: "If some controlling disease was in truth the acting power within him which he could not resist, or if he had not a sufficient use of his reason to control the passions which prompted the act complained of, he is not responsible." As a historical point of much interest, it is well to mark this as the first occasion on which the plea of emotional insanity was recognized in the law courts of this State. But, continues the learned judge, by way of salutary caution, "we must be sure not to be misled by a mere impulse of passion, an idle, frantic humor, or unaccountable mode of action, but

* Reynolds' "System of Medicine," Art. "Insanity."

inquire whether it is an absolute dispossession of the free and natural agency of the human mind." We cannot but admire this first enlightened effort to impress upon a jury the important fact so familiar to alienists, that the emotional centers and faculties, are susceptible of a degree of derangement amounting to insanity. By the caution given in the same breath, he clearly holds to the distinction between this state and the impulse of intemperate rage, and points to the danger of confusing the one with the other. Indeed, in this close resemblance between emotional insanity and the "mere impulse of passion," lies the difficulty which courts of law experience in determining whether the given case is defined by the ambiguous and unsatisfactory rules laid down for distinguishing between sane and insane conduct. "The rule is known," as Mr. John Austin remarks, in speaking of the difficulty of applying general principles to individual cases, "and so is the given species, as the Roman jurists termed it; the difficulty is in bringing the species under the rule; in determining, not what the law is, but whether the given law is applicable to the given facts."

It is the duty of the medical expert witness to examine the facts, and to base on them such logical inferences as the existing state of mental pathology will permit. That part of the question which comprises whether the given law is applicable to the given facts is, very anomalously, left to an unscientific jury to determine. We will see presently by what materials and method they try to determine it. Meanwhile, we have yet to examine some of the points of analogy between emotional insanity and certain stages and forms of what is conventionally called healthy feeling and emotion.

1. Emotional insanity is a disordered state of the emotional centers, evinced on the *affective* side by morbid impressions, on the *effective* side by extravagant, illegal, or immoral acts. In an unequivocal case these two factors—morbid sensibility to impressions and explosive action—go together, and indicate a profound mental derangement. The act alone will not indicate it; for the fact that a man has committed homicide in a rage is no more proof of insanity, than the observation that

he eats his dinner when hungry. A truly insane act can generally be traced to a morbid impression, whether delusion, hallucination, or feeling, exaggerated above all proportion to its exciting cause. Sometimes, however, this connection cannot be established. There are cases where we miss the guiding light of hallucination, and have to trust entirely to that general anarchy and exaggeration of the emotions which the insane have in common with ill-disciplined minds in general. These are the cases so difficult to distinguish from sanity, that even the experienced medical expert sometimes feels puzzled in their presence.

"There are only three ultimate modes of mind," says Mr. Alexander Bain, in speaking of the state of the feelings and emotions among the sane, "feeling, volition, and intellect. Volition is action under feeling; its differentia, therefore, is active energy for an end, which is a distinctive and well-defined property. Intellect has three constituents—discrimination, similarity, and retentiveness—all clearly definable. The precision attaching to volition and to intellect gives a precise *negative* definition to feeling. Thus, any mental state not being action for an end, and not regarded as discrimination, agreement, or retentiveness, must be viewed as feeling." *

He proceeds to show how feeling may subdue volition and overpower the intellect. He indicates as an evident fact that "painful feelings have a power to detain and engross the mind. This is contrary to the working of pain as such, which is to repel whatever causes it; we shut the ears to discord, and turn the eyes away from a dizzying sight. But the mere fact of our being excited by a painful idea retains it in the mind; we cannot banish it, although we will to do so; the very attempt often increases the mental excitement, which is to increase its permanence." †

Further on, the same author remarks: "What we call a state of feeling or emotion is a transitory outburst, from a per-

* Bain; "Mental Science." New York, p. 220.
† Loc. cit.

manent condition approaching to indifference. There is every variety of mode as respects both degree and duration. A feeble stimulus can be continued longer than a powerful one; while every intense display must be rendered short by exhaustion. Practically, the moment of culmination of feeling or passion, is the moment of perilous decisions and fatal mistakes. . . . The interpretation of human character, the understanding of men and their motives, will grow with the improved knowledge of the feelings. Not merely the emotional character as such, and the conduct or voluntary actions, whose motives are the feelings, but also much of what seems purely intellectual tendencies, may derive elucidation from the present subject. The intellectual forces are in all men to some extent, and in many men to a great extent, swayed by emotion."

Of all the emotions, that which is qualified by the word irrational, or the emotion of anger, hatred, and revenge, is most deserving of present consideration. It is a cause of much crime; it lies nearest to insane frenzy, and it gives strong support to a plea of insanity. There are two states of anger—the sudden and the deliberate. Those who become suddenly angry have inflammable emotions; they are easily excited beyond control. Popularly they are known as "quick-tempered people." The outburst being generally transitory and harmless, does not inspire much terror, besides that the infirmity of character is often redeemed by warm and generous impulses.

Deliberate anger, on the contrary, partakes of the nature of revenge. "The mind considers all the circumstances of the injury, as well as the measures and the consequences of retaliation. There is implied in revenge the need of retaliation to satisfy the feelings of the offended person. According to the amount of the injury, and to the exacting disposition of the injured party, is the demand for vengeance. When men have been injured on matters that they are deeply alive to—plundered, cheated, reviled, deprived of their rights—their resentment attests the magnitude of their sufferings, the value that they set on their own inviolability." *

* Bain; Op. cit., p. 264.

Persons harboring deliberate anger or revenge are very prone to criminal acts, and, for the time, closely verge upon insanity. The avenger tracks his foe, watching his movements every day, all the while absorbed in the one intense desire to be even with him. Finally, seizing the opportunity when the latter is unmindful of his danger, he deals him the fatal blow. It is to be noted that, prior to the deed, the emotion of revenge has produced notable changes in the nervous manifestations of the aggressor. He is become absent-minded, because he has withdrawn his attention from all other pursuits to concentrate them on this. It has left him nervous, restless, sleepless, appetiteless, by lowering the general tone of his system. It has been the cause of his manifesting such indications of insanity as incoherent talk, hallucinations, and illusions, through that morbid cerebration which is occasioned by the habit of brooding over a " sea of troubles." We know that long and anxious concentration of thought on any subject will derange the equipoise of the mind, and produce incoherent ideas and fantasies of imagination. It is only necessary to refer to the lives of the early fathers of the wilderness, or to any standard work treating of apparitions and their causes, for ample proof of this statement.

It is not necessary that I should dwell on the close analogy between the state now described and emotional insanity. The point of chief practical importance is the difficulty of always distinguishing them. If, as is acknowledged, the medical expert himself, with all his advantages of training and experience, finds some difficulty at times in determining the line which separates the sane from the insane mind, how impossible it is for unqualified jurymen to solve this problem. Upon this subject, however, I shall have more to say presently.

But, before examining the *criteria* with which juries are furnished to enable them to distinguish between emotional insanity and the culmination of that deliberate anger and revenge with which it is now commonly identified, I will briefly advert to certain popular errors on the subject of insanity in relation to criminal responsibility.

You are aware of the popular distinction between murder

committed in cold blood and in the heat of passion. The name is legion of those who now believe that the latter state is in itself sufficient evidence of a temporary fit of insanity; and there are still a few experts who encourage this belief by teaching that it is possible for an individual to pass in a moment from the sane into the insane state, and then back again to a condition of mental soundness. It is quite probable that no injury against the person is ever committed except under the influence of fear or revenge, or delusion inducing fear or revenge. So that, if this be true, and the reasoning above alluded to be admitted, then every one who commits a crime must have been insane at the moment. And if all insane people are judged irresponsible to the law, no criminal should be punished. Evidently this argument would prove too much.

The same belief prevails in reference to a class of criminal acts becoming very common in this country. You are aware of the popular conviction that no one commits suicide except under the influence of insanity. The verdict of coroners' juries, "Died by his own hand in a fit of temporary insanity," though sprung from a humane motive is injurious by lending indiscriminate countenance to this belief. The conclusion is really not warranted. There are many historical examples which contradict it. Any one may convince himself of this by recalling the circumstances of a few of the many suicides narrated in history. Those mentioned by the historian Tacitus answer very well, for his narrative sets forth the premeditation and the calm deliberation which accompanied and distinguished them. But as a striking refutation of the popular impression, I cannot do better than cite from another source the instance of Cato the Younger, who, having undertaken the defense of Utica, in Africa, during the great civil war between Pompey and Cæsar, and having abandoned the hope of successfully defending the garrison, retired to spend the night reading Plato's "Phædo," and in the morning killed himself by a stab in the breast. One of the greatest of Roman scholars, Cicero, excused the act, on the ground, not indeed of insanity, but of consistency. "But it became Cato," he

observes, "who had by perpetual perseverance strengthened that inflexibility which nature had given him, and had never departed from the purpose and resolution he had once formed to die rather than to look on the face of a tyrant." *

II.

I come now to the *criteria* with which juries are furnished as means of distinguishing between a sane and an insane act. I have to examine these critically, with the object of learning what, if any, value can be attached to them.

1. The so-called free agency of a man is asserted to be a test of his sanity. It is reasoned that only sane men are free agents; that if a man be insane, he is not a free agent; that, not being a free agent, he has no power of determining his conduct, and that, deprived of this latter faculty, he ought not to be held legally accountable for his deeds. The mistake in this train of reasoning is caused by the use of the expression "man is a free agent," without a clear and precise comprehension of its meaning. If the word "free" has any pertinency at all as an expression qualifying human conduct, it can only mean this: man is free, inasmuch as he is not determined by a power external to himself. If I were made the unconscious, unwilling, or dissenting instrument to accomplish another's evil desire, I would not be a free agent in the transaction, and I could not be held legally or morally accountable therefor. But if I commit the deed of my own choice, I am really "free," since nothing usurps or opposes the action of my will, and my will is the last mental determination immediately preceding what I execute. But, if by the expression "free agent" is meant that I enjoy an absolute freedom to do or to refrain, then it has no meaning, for my will is not free in this sense, because it necessarily follows upon that one of the two opposing motives which determines it to act. "Liberty,"

* "Cicero's Offices," b. i., p. 56. Bohn's Ed.

says Hobbes, in the tract on "Liberty and Necessity," "is the absence of all the impediments to action that are not contained in the nature and intrinsical quality of the agent; as, for example, the water is said to descend *freely* or to have *liberty* to descend by the channel of the river, because there is no impediment that way; but not across, because the banks are impediments. And, though the water cannot ascend, yet men never say it wants the liberty to ascend, but the *faculty* or *power*, because the impediment is in the nature of the water, and intrinsical. So, also, we say, he that is tied wants the liberty to go, because the impediment is not in him but in his hands; whereas we say not so of him that is sick or lame, because the impediment is in himself." Since, therefore, the absence of external restraint or compulsion is what really constitutes free agency, all men, be they sane or insane, whose conduct is the result of their own volition, are free agents. That is, they are left at liberty to follow the bent of their own desires and impulses. I think, however, it would have been better had this obscure question of free will been left in the domain of speculative philosophy to which it properly belongs.

2. The legal test for distinguishing between a sane and insane act is thus clearly and forcibly set forth by Judge Hogeboom, in his charge to the jury at the trial of Cole. "The law, in determining a person's responsibility for or immunity from crime, applies a very simple and easily comprehended test, and it is this: Did the accused party understand the nature of the act in which he was engaged, so as to understand whether it was right or wrong? . . . (If so), then he is responsible to the laws of his country, is bound to obey them, and is punished for their violation." That part of the sentence, "understand the nature of the act so as to understand whether it was right or wrong," may mean one of three things. It may mean each individual's standard of right and wrong, which could hardly be, since there is no unvarying concordance of judgment among mankind on questions of right and wrong; or it may mean right or wrong according to the moral standard of the day; or, finally, legal right or wrong,

in relation to legal sanctions. I take it to mean this last, because no legal sanction or punishment is incurred where no positive law is transgressed. But, as a test of insanity, it is not reliable, the insane having been known to commit crimes (under the influence of delusion, let me observe) with full knowledge that what they were about was both legally and morally wrong. Many recorded cases of homicidal mania indicate that the maniac had a very keen appreciation of the criminal character of his act. We are assured, on excellent authority, that individuals in full possession of the knowledge of right and wrong, "have imbrued their hands in the blood of the innocent, frequently in that of their own wives and children, simply because they felt that they must destroy." *

Incredible though this may seem, it is supported by such ample and direct testimony that it cannot be reasonably doubted. Let us take, for example, the case of Henrietta Cornier, tried in France in 1825. She was twenty-seven years of age, of a gentle and cheerful disposition, and very fond of children. Previous to entering the service of Madame Fournier, a marked change had occurred in her disposition. She had become moody and melancholy, and, upon one occasion, had attempted suicide. "On the 4th of November," the narrative goes on to say, "her mistress went out to walk, having instructed her to prepare dinner as usual, and to buy some cheese at Dame Belon's shop in the neighborhood. She had often been there before, and had always displayed great fondness for the Dame's little daughter, an infant of nineteen months. On this occasion, having induced the mother to allow the child to accompany her, she hastily brought it to her mistress' house, laid it across her own bed, and, with a large kitchen knife, severed its head from its body. The mother coming to inquire for her child, Henrietta answered, 'Your child is dead.' The officers of justice who were summoned to the scene found her sitting on a chair near the child's body, gazing upon it, the bloody knife lying near her, and her clothes stained with gore. She made no attempt to

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Dean; "Medical Jurisprudence."

deny her guilt. She even detailed all the circumstances of the tragedy, displaying no feeling of grief or remorse, and replying, when questioned, 'I intended to kill the child.' She acknowledged that she had no particular reason for the deed, saying that the impulse to shed blood had taken possession of her mind, and that she was obliged by her destiny to do it." *

There are no data here to show that this girl labored under any delusion *with respect to the nature of the deed.* True, judging from her conduct for a while previous, her insanity is evident enough; but as regards the bearing of her insane state upon her legal responsibility, it is well to remember the rule that an insane person is exempt, "Not because he is insane, but because it is inferred from his insanity that, at the time of the alleged wrong, he was not capable of unlawful intention or inadvertence." †

The insane impulse to commit an act, the criminal nature of which is at the same time well known, is well illustrated in another example. "A young man, twenty-one years old, lost his father at an early age, and never evinced much love for his mother. When eighteen years old, he began to shun society, and felt a strong desire to commit murder. Sometimes, when embracing his mother, his face would flush, his eyes sparkle, and he would cry out, 'Mother, save yourself, I am forced to kill you.' " ‡

On the other hand, history is full of murders committed by political and religious fanatics, in whom, so far as it is possible to judge, there was no evidence of insanity, and yet they did not regard their terrible crimes as either morally or legally wrong. Brutus believed he was acting a good and noble part in slaying Julius Cæsar, whom he regarded as a selfish despot. His is the excuse of every man who wreaks vengeance with his own hands, under a mistaken notion of the public necessity. With consummate art Shakespeare makes him say:

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* Dean; "Medical Jurisprudence."

† Austin; "Lectures on Jurisprudence."

‡ Dean; "Medical Jurisprudence."

"If there be any in this assembly, any dear friend of Cæsar's, to him I say that Brutus's love to Cæsar was no less than his. If, then, that friend demand why Brutus rose against Cæsar, this is my answer, not that I loved Cæsar less, but that I loved Rome more. Had you rather Cæsar were living, and die all slaves, than that Cæsar were dead to live all free men? . . . . Who is here so base that he would be a bondsman? . . . . Who is here so vile that will not love his country? If any, speak; for him have I offended. I pause for a reply." And, when all the assembled citizens answered, "None, Brutus, none," Brutus replied, "Then none have I offended."

Ravaillac did not believe he was doing wrong in assassinating Henry IV. of France; nor did Charlotte Corday, when she plunged a dagger into Marat; nor yet Booth when he shot President Lincoln.

If the rule of not knowing the right from the wrong of an act has so many exceptions, its force is destroyed, and it ceases to be reliable.

I proceed now to consider a test, which, used chiefly of late, seems to have exercised a good deal of influence over the minds of jurymen. It may be called "the insane frenzy" test. It is expounded as follows by Judge Hogeboom, in the charge already alluded to:

"An insane impulse leaving the mind incapable of exertion, holding the individual incapable of exercising his mind, so far as I have defined it to you, exempts him from responsibility, and if, under the influence of such a want of mind, the prisoner commits the act, whether you call it an insane impulse or anything else, it exempts him from responsibility. Mere impulse, whether you call it irresponsible impulse or not, does not excuse if it be the impulse of excited passion arising from revenge, from resentment, from intention to do an act which is wrong, or a crime, and the prisoner is aware of it. Whether he is impelled to it by peculiarities of temperament, by a nervous disposition, by excited feeling, or anything of that sort, will not excuse him from responsibility."

It is not too much to say of this labored definition, that, as a test of insanity, it has no practical value whatever. In fact,

it leaves the whole question where it was before. For how are you to distinguish between *insane impulse* and *mere impulse*, or the impulse of mere excited temper? Understand the precise meaning of impulse. It is a sudden volition, a will to act without proper immediate consciousness of the nature, quality, or consequences of the act. This is impulse. But, according to Judge Hogeboom's explanation, it must also be insanity.

However, conceding for the moment that mere impulse is distinguishable from insane impulse by the presence of the element consciousness, what is this consciousness we are speaking about, and how is it to be proved and made a legal test? Which of the following is meant by consciousness as here applied: to know you are committing a deed; or to remember its nature, *i. e.*, if it be right or wrong, or to deliberate on the time, means, and circumstances of its doing? Of all these meanings, that of knowing the right or wrong of the deed is the only one applicable. For every waking man knows when he is doing something unusual, and many undoubtedly mad men deliberate patiently on the time, means, and circumstances favorable to success.

Before any practical value can be attached to the test of consciousness, it should not only be clearly defined what having consciousness means, but we should be informed how it is cognizable in another. If it means a special inner sense, by which the facts of existence are presented to each individual's inner self, it is useless as a test of insanity. For we, jurymen or others, who are asked to pass upon it, cannot enter a man's mind, and there study its operations. We have but two ways of knowing the fact consciousness. In ourselves we know it by introspection, in others by observation. And by observation I mean the noting of such points as (*a*) points of expression in the eye, the features in general, the voice, the muscular system; (*b*) points of conduct, as the individual's bearing and relation to others; (*c*) points indicating the "course of the thoughts"—or, the sum of the two preceding, with whatever other acts indicate the consciousness of the individual.* Con-

* Bain; "Moral Science."

sequently, we have only one way of learning another's consciousness; and, to ask us to pronounce upon this is to require that we should declare not his consciousness, but our own mere impression thereof.

The truth is, a sane man in a fit of passion is as likely to be unconscious of what he is doing as an insane man in a frenzy. If an insane man is held unaccountable for a crime, on the ground that at the time of its committal he was unconscious (to use the expression) of what he was doing, many undoubtedly sane murderers should be acquitted on the same ground. But the ground seems to me altogether untenable.*

III.

It would, therefore, seem that the insane quality of an act is no trifling question to be settled by the application of some

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* The great novelists and poets, who, it will be conceded, are the most accurate dissectors of the human passions, are never guilty of the blunder of attempting a distinction between mere impulse and insane impulse, on the ground of the presence or absence of consciousness. If the reader will look into the powerfully dramatic poem entitled "A Last Confession," in the volume of fine poetry lately from the pen of Mr. D. G. Rossetti, he will find the passage which I here quote for its apt illustration of this point:

> "'Take it,' I said to her the second time,
> 'Take it and keep it.' And then came a fire
> That burnt my hand; and then the fire was blood,
> And sea and sky were blood and fire, and all
> The day was one red blindness; till it seemed
> Within the whirling brain's entanglement
> That she or I or all things bled to death.
> And then I found her lying at my feet,
> And knew that I had stabbed her, and saw
> The look she gave me when she took the knife
> Deep in her heart," etc.

Here the frenzy of passion and the loss of consciousness are coeval. Consciousness does not return for some time, as may be inferred from the line—

> "And then I found her lying at my feet."

But the poet sets up no plea of temporary insanity for the hero of his wonderful poem, based on the ground of want of conciousness at the time he killed his mistress.

simple, common-sense rule. It is, on the contrary, a very intricate question, and can be rightly reasoned out by those only whom a special training has fitted for the task.

The medical expert, to whom is committed a very important, though too subordinate, share in this task, acquires his knowledge of the mental state of a given individual in two ways, both of which he must combine when the diagnosis is difficult, though only one may be essential when it is easy. That is, he acquires this knowledge through his study of the workings of the sound and of the unsound mind. If the insane state of an individual be clear and unmistakable, he recognizes it through his previous acquaintance with insanity; but, if it be ill-defined, and so mixed up with indications of sound mind as not to bear on its face its own distinctive mark, he must combine his knowledge of healthy with his knowledge of morbid psychology. From this consideration it is therefore evident how ill-judged it is to submit so important and difficult a question to the decision of twelve men who do not necessarily know anything about it, and who—doubtless there may be exceptions—are unfamiliar with the scientific method of examining and sifting evidence. And, furthermore, so long as the plea of insanity is submitted to unqualified juries, it will be possible to use it successfully for sinister purposes and to the detriment of the public interest. Whether or not the public is quite justified in the suspicion with which it now regards this plea is a point which I shall not attempt to determine. But there is undoubtedly a general impression abroad that a criminal's chances of acquittal depend now, in some cases, on the ingenuity of counsel in constructing a fanciful and highly sensational plea of "insanity *pro tem.*"

The desire for a reform which shall surround the plea of insanity with safeguards such as are demanded by its dignity and importance, has been long felt, and of late much intensified. Two measures of reform are indeed needed. One should cause the plea of insanity to be entirely removed from our courts of original jurisdiction; the other should provide a new method of calling medical testimony.

The first is urged in a recent message from Governor Alcorn

to the Legislature of Mississippi. "I propose," he says, "in order to separate questions of insanity absolutely from questions of taking human life, that your honorable bodies alter our criminal law substantially as follows: That in charges of murder, manslaughter, or assault with intent to kill, if the question of insanity should be raised before the committing magistrate, that magistrate, if he hold that the proof has shown a presumption of insanity, coupled with a presumption of murder, manslaughter, or assault with intent to kill, shall order the commitment of the accused to the county jail, or other place of safe keeping, to await his examination before the chancery court of the county in which the crime shall have been alleged to have been done." He shall be held there deprived of the right of *habeas corpus*, being incompetent to make a bond or to take an oath. Then, after a fixed preliminary form, the accused is to be brought before the Chancery Court to have his sanity or insanity pronounced upon. If it be decided here that he is not insane, he is to be deprived of the right to make this plea: "the trial for murder, manslaughter, or assault with intent to kill, shall go forward to the exclusion of that plea." But, in the event of the decision being in favor of his insanity, the court "shall order his duress in a ward or wards to be set apart for the restraint and safekeeping of the dangerous insane in the lunatic asylum."

I think these are the chief points in this important document, bearing on our present subject. Let us examine them somewhat in detail.

It may be asked at the outset whether it is proper to separate questions of insanity absolutely from questions of taking human life. In other words, whether, when the plea of insanity is urged, it should be made a separate and special issue, requiring a separate and special trial. The answer will depend on our previous decision as to the objects sought to be attained by this separation. It seems to me these objects are as follows: 1. To facilitate the end of justice by preventing the plea of insanity from being brought forward as a piece of legal strategy; 2. To save unnecessary waste of time and

means by overruling the necessity for a trial where the plea of insanity is substantiated.

The question may, however, be put, whether it is desirable that the defence should be deprived of the privilege of encumbering the proceedings of a criminal trial with the plea of insanity merely for the sake of economy, and of the end of justice. The answer depends in great measure on the view we take of the purpose of a trial. If it be the purpose of a trial to facilitate the acquittal of the prisoner, the plea of insanity should be urged in all cases by any imaginable means admitting it, for this is the surest way of procuring an acquittal. Again, if it be the purpose of a trial to insure the condemnation of the prisoner, this plea should be unconditionally excluded. But if, as everybody holds, it be the purpose of a trial to arrive at a just decision on all the ascertainable facts of the case, the plea of insanity should be taken out of our circuit courts, and passed upon separately. For it is necessary to determine, first of all, the point of insanity ; because, if the accused be insane, he cannot be put upon trial (in this State, at least, according to the statute) for the act alleged against him; and, if he be sane, he ought not to be allowed to use the plea of insanity as a refuge from the legal consequences of his act.

I am aware that this argument is met, though not answered, by serious objections, not the least among which is that it aims at depriving the subject of a right, viz., the right to set up whatever plea he deems best for his own interest, and to have it passed upon by a jury of his peers. To this I answer, that it certainly does deprive him of this right; but that, inasmuch as the right is derived from the government, that is to say, from the common consent of the governed, and is conferred for the sake of the general weal, and not for the good of individuals as opposed to the general weal, it follows that the government can rescind this right, and, moreover, should do so when used against the public safety. In this conclusion I am supported by the high authority of Mr. John Austin, who expresses himself as follows in the able work already cited in this paper:

"The rights which a government confers, and the duties

which it lays on its subjects, ought to be conferred and imposed for the advancement of the common weal, or with a view to the aggregate happiness of all the members of the society."

The right now in question, and our correlative duty to respect it, are conferred and enjoined by government for the advancement of the common weal, but, in the event of its being used to the injury of the same, the government may either temporarily withdraw it, or take such precautions as will insure it from abuse.

The objection which I find against Governor Alcorn's message is its incompleteness. It makes no mention of a very essential reform—the abandonment of the customary way of procuring and examining medical expert witnesses. Without this the change it contemplates would have little or no effect. It would still perpetuate the mistake of allowing experts to be employed for various politic reasons, and of thus inducing them to range themselves as rivals on opposite sides of a contest. This radical error has, no doubt, contributed more than anything else to depreciate the character and influence of medical testimony. And it affords one of the chief reasons why first-class authorities in evidence are able to depict medical evidence, and with too much truth, in terms such as the following:

"It is often quite surprising to see with what facility and to what an extent their views can be made to correspond with the wishes or interests of the parties who call them. They may not wilfully misrepresent what they think, but their judgments become so warped by regarding the subject from one point of view, that, even when conscientiously disposed, they are incapable of expressing a candid opinion."

The words, "their judgments become so warped by regarding the subject from one point of view," clearly reflect the result of the present injurious system. The radical fault is in this system, not in medical men or medical testimony. Unreflecting people are apt to jump to the conclusion that the defect rests with medical men, and taunt the profession with the silly expression, "doctors differ," as if it were a fact that

doctors differ any more than divines, or lawyers, or politicians, or the general lay body. No doubt medical testifiers make mistakes, but they are of the same character as the mistakes of all testifiers who are ranged on opposite sides of a disputed question—mistakes from that overzeal so likely to lead one to forget the cause of justice and truth in an exciting contest for victory or success. Behind the professional presence, with its prestige of culture and high social position, lives the man with his faults and imperfections; with his blurred and limited view of things; with his greater susceptibility to warm emotion than to cool reflection; with his tendency to espouse a cause through sympathy often, often also through self-interest. These faults are not professional: they are human—the medical witness shares them with the human race. But, in my judgment, they are greatly encouraged by our objectionable rule of allowing each side to appoint its own medical testimony.

What, now, is the remedy? Should we adopt the expedient of employing a medical commissioner to sit with the judge? This would be a good innovation so far as it goes, but it would not be a remedy for the evil complained of. It seems to me that the only satisfactory reform would be such as should deal mainly with the present mode of calling medical expert testimony. And the desired change might be partial or complete.

A partial change would consist in the court appointing some medical witnesses and the defence others. The witnesses so appointed should meet and make their examination of the case in presence of each other. They will thus start from a common ground. This is one advantage of a consultation. Another, and a by no means trifling one, is that anything of importance which might be omitted by one can be supplied by the other. Subsequently, they should reason out their conclusions separately, or, still better, together. So much being accomplished, each should furnish a written report of his opinion to prosecution and defence. These reports will constitute the data of their evidence, and on them they are to be sworn and examined as to their opinions. In addition, a commissioner might be associated with the judge for the

purpose of assisting him on medical questions. This plan would correct some of the evil, by introducing unity and organization into medical evidence; and unity and organization would give medical evidence a force, a precision, and a certainty, such as it cannot lay claim to at present.

A complete change would consist in the court appointing all the medical testimony. Medical experts would then be commissioners selected by the court to examine into the genuineness of the plea of insanity. As a companion to the reform advocated by Governor Alcorn, I am of opinion that this would be the more effectual improvement of the two. A simple majority of such commissioners might be sufficient to decide the mental state of the accused.

Only when some such measure is adopted will medical evidence be entitled to rational confidence, and the medical expert be placed in the true position of a candid, unbiased inquisitor, conducting a line of inquiry in presence of the case, and delivering his opinion of its character, without concerning himself with the intrigues of the defense or with the sentiments of the public.

ON

SECTS IN MEDICINE.

By JOHN C. PETERS, M.D.*

So much has been said about sects in medicine of late that I have been induced to search the teachings of history on this point, and will endeavor to give them divested as far as possible of all prejudices or mere opinions.

The first and most important result of this research seems to be, that, although many sects and systems have arisen and flourished like parasites around and upon medicine proper, yet it has never been sectarian. It has always been inclusive, varied, and catholic enough to embrace within itself all rational systems, and all useful discoveries. The foundations of medicine are so broad that the most brilliant discoveries of its scientific votaries, the humblest additions of the common man, and the successful results of the merest accident naturally take their place in its archives in strict proportion to their truth and usefulness. It resists nothing which is in accord with reason or enlightened experience, and profits even by the teachings of its bitterest enemies.

An impartial consideration of the doctrines, theories, and practices of physicians of all ages and of the present times, will convince us that there is only one true art of healing, which rests on the broadest and most comprehensive laws; but we all know that there have been, and probably always will be,

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* Read before the Society, 1870.

many systems; for they are always very fragmentary and transient, merely marking the spirit of inquiry in some one or more directions, or the degree of knowledge, enthusiasm, or folly which is prevailing among some members of the profession at one particular time. Systems are merely the expression of the hopes, prejudices, or ambitions of either honest or designing, but always more or less bigoted or short-sighted men, who become so infatuated with the discovery of some partial or apparent truth that they deceive themselves and their followers into the belief that no greater truths have ever been discovered before, or ever will be again. Instead of making simple additions to science, system makers think it necessary to endeavor to subvert everything which has preceded them in order to make place for some fledgeling of their own.

The thoughtful student of medical history must soon become convinced that the whole art of medicine never has and never can exist in one exclusive system. Each has always claimed to be the only true one; but it has always been superseded sooner or later by another making the same arrogant pretensions. This process has prevailed from the earliest ages, and doubtless will continue till the end of time; for there are always some minds which never can be fortified against the fascination of ingenious, but wonderfully narrow and contracted theories, by observing the fleeting character and puny proportions of those which have already gone down under the relentless ordeals of time and experience.

Because the human body contains blood, fluids, and humors, some factious physicians became exclusive humoralists; because we have bones, muscles, and other solids, some became solidists, and excluded the fluids from all except a very subordinate place in the human system; because many chemical operations take place in the animal economy, some adopted exclusively chemical notions; and so on *ad infinitum*. But these systems, however important and imposing they may have been, or still seem, are the veriest froth which has ever floated on the surface of any art when compared with the vast sum of all the discoveries which long lines of able anatomists, physiologists, surgeons, chemists, and practical physicians

have made in every age and century. No systems, either ancient or modern, have ever carried the largest, much less the best part of the profession with them, however much it may have adopted from them. Amid all the changes of systems, and the greatest aberrations of the schools, a continuous stream of solid advancement is broadly manifest in every age. As Hufeland correctly says, the sense of true art has always been preserved in the minds of numerous individuals, and there has ever been a church of genuine physicians, who have been guided by reason and experience, who have ever thought and willed the same things, who have ever understood and always will understand each other through all the changes of ages, customs, and languages. Thus Hippocrates and Galen are regarded as marking the two greatest epochs in the early history of medicine. But Hippocrates (B. C. 460) was merely the scion of a family which had followed the pursuit of medicine for fully 300 years, and had preserved many manuscripts and produced numerous celebrated physicians. Much that is attributed to him is but the accumulated knowledge of his predecessors, which fell into his hands by right of descent, and gave him facilities which could not be obtained by others till after parchment and papyrus came into free use in Europe. Although Hippocrates was the contemporary of Socrates, Plato, Xenophon, Pericles, Herodotus, Thucydides, Pindar, Æschylus, Euripides, Sophocles, Aristophanes, and Aristides, and fully their equal in natural ability and acquirements, yet he simply gave expression and embodiment, power of perpetuity and progress to the wisdom, experience, and aspirations of the best part of the profession which had preceded him.

Again, Galen (A. D. 131) is supposed to mark another great era in scientific medicine. But the 250 years preceding him were times of greatest activity in the study and practice which we find in the history of the art. In the very years that he lived there were no less than six one-sided sects of doctors, viz., the *Dogmatics*, who relied upon their pure reason, imagination, or internal consciousness about disease and its treatment; the *pure Empirics*, who rested

upon experiment alone, to the exclusion of all reasoning, and almost of judgment and common sense; the *Methodists*, who treated disease in an extremely arbitrary and so-called methodical manner; the *Pneumatics*, who adopted exclusive vital or ethereal notions; the *Episynthetics* or Eclectics, or so-called Conciliators, who strove to harmonize all the conflicting systems and theories. The regular profession never came under the controlling influence of any of these sects, but pursued a wise and unobtrusive course, fully recognizing the predominating absurdity of all these extreme notions, and the partial value of some of them. Anatomy, physiology, materia medica, therapeutics, hygiene, pathology, and the philosophy of medicine were making gigantic strides, so that Galen's code really possessed no great originality, being made up from the discoveries and doctrines of all his predecessors. Theory, or sect, or system could no more mislead such men as Hippocrates, Aretæus, Baglivi, Sydenham, Haller, or Boerhaave, and many others, than a will-of-the-wisp can seduce a traveler who carries a torch, and well knows the road he is on.

The great glory of the true and rational profession of medicine, which has continued from that time to this, is, that there were no sects in it, and we may also say, there never has been, nor ever will be; there being no occasion for them. There is place in it for every real improvement, but not to the exclusion of all others; there is allowance made for every reasonable difference of opinion, but not for the domineering preponderance of any one; every new and rational, or even plausible remedy, whether vegetable, mineral, or animal, always was and is warmly received. This is evidenced by the recent histories of the introduction of oxygen gas, chloroform, bromide of potash, chloral, carbolic and lactic acids, the phosphates, and scores of others; but there is no room for universal panaceas. Every new and really useful instrument, like the ophthalmoscope, laryngoscope, and many others, is almost immediately adopted, by hosts of scientific, skillful, industrious, generous and honorable men. Every size and form of dose, from the smallest within the range of common sense and sound experience, are not only tolerated but advocated; whilst the largest,

which excessive suffering or real danger to life seem absolutely to call for, are often given with a cautious boldness, which sometimes savors of hesitation and reluctance. While the principles of scientific and rational medicine are well fixed and founded, they are so broad and catholic that no rational remedy or procedure for the cure of disease is excluded; so that it is exceedingly difficult for a generous-minded, reasonably unselfish, honorably ambitious, moderately prudent, and fairly learned and skillful physician to overstep the ethics and traditions of his profession. This can only be done by a bigoted and exceedingly enthusiastic devotion to one real or apparent truth, to the exclusion of myriads of others; or by an open resort to quackery.

At the present time we have the female medical sect; the water-cure or hydropathic sect; the movement-cure, or gymnastic sect; the herbalist, or botanic sect; the mystic, demoniac, clairvoyant, or spiritual sect; and the homœopathic. The counterparts of these have prevailed from time to time, and from the earliest ages.

It may be, perhaps, hazardous to discuss these matters in any assembly, and still more so here, for Plato tells us that it is a great sign of an intemperate and corrupt commonwealth where lawyers and physicians do abound.

The best class of the present *female medical sect* has not essayed to introduce new theories or new remedies into the practice of medicine, but is merely trying to learn and practice the art as they find it among the best modern physicians. But it would not be a whit more absurd if it assumed that women only should practice medicine, and all males should be excluded, than it is for the botanic physicians, or modern herbalists, to rely entirely upon vegetable remedies; or for the hydropathists to use water only in the treatment of disease; or for homœopathists to rely exclusively upon infinitesimal doses, or the law *similia similibus*.

In the earliest ages the obstetric art was in the hands of females; but before the Christian era several works were written by competent physicians for the use of midwives and nurses. Among these we may select that of Moschion, who

wrote a very concise treatise in 152 short sentences, or so-called chapters, in which he explained the whole mechanism of ordinary labor; the correct management of nursing women and of babes; the most common child-bed diseases, such as puerperal hæmorrhages and metrites, and even displacements of the uterus. He was an accomplished obstetrician, and some of his views are still worthy of attention; for he was a good observer, bound to no sect or theory, while he reasoned and prescribed with much skill and judgment.

In the time of the Emperor Constantine the Great, the Empress Flacilla watched over the hospitals, attended to the proper preparation of the food, to the cleanliness of the persons, beds, and wards of the sick, also visited them daily, and even prescribed for many.

In the celebrated school of Salerno, in the 7th century, females were admitted as students of medicine, and some of them distinguished themselves, not only in their practice, but by their medical writings, among whom we may mention: Constantia, Calenda, Abella, Rebecca, Trotha, and Mercurialis.

In the feudal times, as is well known, it was not uncommon for knights who had fought for their ladies, to commit the care of their wounds to the objects of their worship, who took good care always to be possessed of ointments of great repute, as well as charms and amulets of supposed healing virtue, in addition to their own tenderness and personal attractions. Thus armed with potent balms and stimulants, they always rivaled their aged mothers and ordinary nurses; and at times even the priests and doctors, not only in the assiduity of their attentions, but in their real success.

In the time of Queen Elizabeth, however, all this was changed; for, when sundry poor and probably ugly old women, applied to the Royal College of Physicians and Surgeons for permission to employ their small talent in ministering to the cure of diseases and wounds by means of certain herbs and simples; in the application whereof they boastfully stated that God himself had given them special knowledge; this was firmly and peremptorily refused, on the grounds,

1st, that it was a fraud and blasphemy to assert that Providence had especially favored old women rather than the learned members of the Royal College; 2d, that their knowledge, whatever it might be, had either been gained by common-place experience, or else was very much clouded by mystery and exaggeration; and hence was either of little or no special importance, and was more or less of a pretension and fraud.

At a later time, female practitioners rose to such celebrity that the physicians of Edward VI. of England were dismissed by order of his Council, which placed him in the hands of a confident woman, who promised to restore him quickly to health; but all his bad symptoms, which had been skillfully held in abeyance, soon returned in a violent degree, and he quickly died.

Cotta, in 1612, issued a warning to sick people against consulting what he impudently called petticoat practitioners, whom he advised to prescribe rules for the correct management of themselves, rather than physic to their friends.

Up to comparatively modern times, cookery books were supplemented with various medical prescriptions, and armed with these and many old family receipts for various diseases many good women diversified their daily occupations by concocting medicines for their servants and dependents; and many a Lady Dorel of Kent and Lady Tailor of Huntingdon thought they knew of numerous precious medicines to heal wounds, cure colics, improve the sight, and relieve sore legs.

The late revival of the study of medicine by females is too well known to require comment here; and it remains to be seen if it will be subjected to the same transitions which has always marked its history in former times. Then the majority of female practitioners were ignorant and pretentious; hence they were necessarily overshadowed by the resistless advance of science.

The *water cure* is supposed to be a modern discovery; but it was used in the very earliest ages in the temples of Esculapius, against various febrile, inflammatory, and surgical diseases,

and was recommended by many of the earliest medical writers, including Hippocrates, Galen, and Avicenna. Thus, before the 1st century, Cardanus boasted that he could cure all diseases with cold water alone. Antonius Musa cured the Emperor Augustus with cold water, and killed the amiable Marcellus with the same harsh means, in the time of St. Luke. Heliodorus used light surgical dressings, the free application of tepid water, and moist compresses. Cassius used cold water freely, both internally and externally, in fevers. Immediately after the introduction of gunpowder, cold water was used freely to relieve the supposed burn of the wounds. In the middle ages the barber-surgeons and bath-keepers were formidable rivals of scientific physicians and surgeons.

In the 15th century wounds were duly washed with fair clean water, covered with a soft linen rag, and opened once a day to cleanse off purulent and other matter. If they needed stimulating, linseed oil and turpentine were applied; if they required astringents, Armenian bole, fullers' clay, or weak solutions of alum or sulphate of zinc were employed. When this was not satisfactory to the public, quackish men like Paracelsus applied complicated and disgusting salves to the weapon which had caused the wound, but treated the injury itself in the above judicious and simple manner. Dr. Fludd, Sir Kelemn Digby, Valentine Greatrake, and many others descended to the same impostures, but filched the above wise procedures from the profession which they outraged and abused.

In the 18th century, Sir John Floyer and Dr. Baynard, in England, resorted to bathing almost exclusively in chronic diseases, as did Hoffmann and Hahn on the Continent. In 1797, Dr. James Currie published highly favorable reports of the effects of water in many diseases. But the distinctive *water-cure*, or hydropathy of modern times, owes its origin to an ignorant Silesian peasant, Vincent Priessnitz. At various times he sprained his wrist, crushed his thumb, and broke his ribs, in the treatment of which he relied on cold wet compresses. He noticed that when water had been applied for a long time, and the skin become thoroughly macerated, that

pimples, boils, and rashes were apt to come out, and was thus led to frame for himself a crude humoral pathology for all diseases, and a theory of the elimination of all morbific matters through the skin; or by flushing the liver, stomach, bowels and kidneys with enormous quantities of water. He tried to prevent further morbid accumulations by a severely regulated dietary regimen. His water treatment was unquestionably too incessant and severe, and some of his patients succumbed to this, to excessive exercise, and to food that was too plain and too light, aided by insufficient bed and body clothing; while others only escaped with their lives from a peculiar vital tenacity which many apparently delicate persons often exhibit, especially when buoyed up by the enthusiasm which is excited by boundless promises, and equally boundless abuse of all other medical practice. The exclusive use of water in disease must be regarded in the same light as that of any patent pill, syrup, or mixture. The hypochondriac, the valetudinarian, the hysterical, and the self-indulgent may receive some benefit, which however is generally temporary; self-limited diseases will of course recover, though in a less proportion than when under a more varied and scientific treatment; and this is about all that can be said of it, although Captain Claridges and Bulwers, in their "Confessions of a Water-patient," will always do much to render it popular.

The originator of the *movement cure* was Herodicus of Thrace, who is stated by Hippocrates to have killed some of his patients with sub-acute internal inflammations by the severity of his exercises, and to have brought on ruptures, rheumatisms, pleurisies, lumbago, and numerous myalgic sufferings in others.

The advantages of properly regulated exercise are so fully admitted that we need only say that the attempt to form an exclusive sect for the treatment of all diseases, including cancer, consumption, etc., by the movement cure, is only a trifle more absurd than to treat them with water alone. Physicians cheerfully admit the occasional advantages of these methods, and have picked out some useful hints from the excessive, exclusive, and often dangerous procedures of their advocates.

As regards the *Botanic sect*, all primitive medicine is almost necessarily herbal or botanic, as it still is among rude nations like the Indians and Tartars. Civilization must have made considerable advances before mineral and chemical preparations can be applied to the cure of disease. It is easy for the common man to pick up a plant and make some random trials with it; and it is equally easy for him to exaggerate all its virtues; but to obtain mineral remedies metallurgy must be understood, and some progress must have been made in chemistry.

Vegetable remedies have never been neglected in the regular profession; for it has always been admitted that the indigenous remedies of every country are well worthy of attention.

Pamphilius, in the reign of Ptolemy Philometer, was the author of a treatise on medicinal herbs, which he described in alphabetical order, and admits that he had collated largely from the Egyptian Hermes or Thot.

The elder Heras and Attalus the 2d were actively engaged in the cultivation and administration of medicinal herbs. Plutarch tells us that their botanical gardens were filled with hyosciamus, hellebore, conium, aconite, colocynth, colchicum, and many other active plants; which were collected at proper seasons, their juices expressed, and fluid extracts made, or tinctures prepared with wine; while the roots, leaves, and seeds were dried and preserved for future use. Hippocrates (450 B. C.) used 300 vegetable, 150 animal, and only 36 mineral substances in his practice. Dioscorides, in the reigns of Claudius and Nero, recommended 700 vegetable and 168 animal substances. Melampus noticed that goats were purged with hellebore, and 200 years before the Trojan war, and long before the Christian era, advised it in melancholic and bilious disorders. Antonius Musa, according to Pliny, owed his first success in Rome to the use of lettuce or lactucarium for morbid vigilance and sleeplessness in the Emperor Augustus. Galen, in the decline of life, used the same remedy for the sleeplessness of old age, and correctly informs us that the young and tender plants are inoperative. Musa also used

the speedwell, or modern leptandra, or so-called Culver's physic, and recommended it in no less than forty-seven different diseases. Apulius Celsus wrote a treatise on medical herbs, which is still extant. Philomenus used assafœtida in colic, nervousness, convulsions, and even in tetanus, in the time of Nero. Archigenes used castor and musk in the reign of Trajan. Antyllus, in the reign of the Emperor Valerian, treated asthma with inhalations or suffumigation of the fumes of aristolochia and clematis, sprinkled over burning coals. Conium was better known in the time of Socrates than ever after, until the time of Baron Storck in the 18th century. The sect of Essenes paid particular attention to vegetable remedies, 150 B. C. Archigenes used opium for pain, diarrhœa and dysentery, in the 1st century. Aretæus of Cappadocia used cantharides for blisters in the 1st century, previous to which the juice of euphorbium or milk-weed had been relied upon. Many virtues were attributed to sambucus, or elder. Alexander of Tralles, Oribasius, and Ætius used colchicum in rheumatism and gout; and Cælus Aurelianus gave it mixed with pepper, ginger, cinnamon, and aniseed, to prevent its prostrating effects; and with scammony to increase its purgative properties. He says the gouty people who took it walked almost immediately. Male fern was used by Galen against tape worm, yet the so-called secret was sold to Louis XV., for a very large sum. The rapid extension of the Grecian army under Alexander the Great was the means of introducing many new vegetable remedies, so that at one time it was said that the smallest sore could not be treated, except by some herb brought from the Red Sea. Pliny the Elder, A. D. 23, wrote five books on the medicinal uses of plants. Ruffius of Ephesus wrote a treatise on the use of vegetable purgatives, including hellebore, colocynth, colchicum, aloes, scammony, gamboge, and others. Priscian was the author of a work on indigenous medicinal plants. In the 3d century, a medical poem was written in seventy-seven sections, each of which was devoted to the therapeutic virtues of some particular plant. Ætius, in the 6th century, wrote a large treatise on medicinal plants. The Arabians introduced manna, cassia,

senna, rhubarb, musk, nutmeg, camphor, and *nux vomica* into practice. Theophrastus, who inherited the manuscripts, etc., of Aristotle, speaks of a vegetable poison which could be moderated in such manner as to kill in two or three months, or as many years. This was prepared from *aconite*, a plant which people were forbidden in those early times to have in their possession, on pain of death.

In the 11th century, a book on therapeutics was written, in six volumes, in which it is stated that the principal difficulty of the author was the multiplicity of the vegetable remedies, both indigenous, Saracenic and Greek, which were in common use; especially as the early herbalists, like the modern, ascribed almost incredible virtues to every herb of the field.

Before the invention of printing, manuscript books, written on papyrus or parchment, were necessarily in the hands of the few; but, from the year 1554 to 1561, no less than 32,000 copies of Dioscorides' great work on the Materia Medica were printed and sold.

Caius Plinius, under Vespasian, wrote fifteen books on botanic Materia Medica, and, unlike the modern botanic physicians, was opposed to complicated prescriptions, but like them preferred indigenous to foreign remedies. Herophilus of Alexandria, long before the Christian era, said that the plants which we are constantly treading under our feet are possessed of many distinctive and powerful properties, which can be made either dangerous or useful according to the skill and intelligence with which we employ them. Angitia of Colchis used many herbs, especially in angina or sore throat, which derives its name from her. An Arabian physician, Ebu Barthai, wrote a great book in which he describes no less than 1400 medicinal plants. Matthiolus, in A. D. 1501, left several works, principally relating to the medicinal virtues of plants, and wrote a commentary on the great work of Dioscorides, illustrated with many plates.

The discovery of America in 1492 was followed by the addition of a long list of new vegetable remedies, and the well-known dangerous fault of attributing too many and too great

virtues to one and the same plant was fallen into, especially as regards sarsaparilla, sassafras, guaiac, and even ipecac and Peruvian bark.

From 1760 to 1771, Baron Storck, President of the faculty of Medicine at Vienna, and physician to the Empress Maria Theresa, distinguished himself by a long and assiduous course of experiments upon the sick and healthy with various narcotic vegetables, such as aconite, pulsatilla, conium, hyosciamus, stramonium, colchicum, and others; and certainly has the merit of fixing the attention of practitioners on these active and useful plants from that time to the present.

Thus it will be seen that almost every remedy relied upon by the homœopathic and botanic sects has been known from the earliest ages, and equally good and even much better ones have been in constant use before and since the commencement of the Christian era.

If the true profession can learn something from the somewhat practical water, movement, and botanic sects it has always been utterly at variance with the *supernatural* or *clairvoyant*, and with the so-called *spiritual* or *demoniac* sects. The regular profession has been in a constant struggle and opposition to these from the earliest ages.

The Egyptian priests who were charged with the preservation of the votive tablets which contained the earliest records of medical practice, in the temples, seized upon them, and attempted to control exclusively the treatment of the sick, under the pretense that disease and pestilence were always the result of the anger of the gods and demons; and that it belonged to their functions to make propitiation. But, even in the very precincts of the temples there were always true physicians, who maintained that no disorder was more the result of divine or demoniac wrath than another; that they all originated from natural causes, and from infringements of the laws of nature, and principally from the neglect of personal and public hygiene; from improper diet, clothing, uncleanliness of persons, houses, streets, cities; or from improper drainage of lands and places; also very frequently from excess of food and drink, and deficient exercise. These true physicians likewise

maintained that therapeutics was not the invention of special spirits, demons, or gods, but was the natural result of the slow, careful and difficult experience of skilled and thoughtful mortals. They declared that it was useless to sleep in the temples merely to dream dreams and consult oracles, but it was wise to depend upon the observations and reflections recorded on the votive tablets, and gained in the actual management of disease. They believed and taught that medicines were not given to appease the anger of irritable or malignant spirits, (demons), or so-called gods, but had been scattered broadcast over the earth by the Creator to remove the inevitable consequences of man's misfortunes, ignorance, and folly; and that it only required the industrious and intelligent exertion of man's powers of body and mind to discover their uses. In the very earliest ages, and in the very precincts of the temples, these "real doctors" believed and taught that true "professional piety" consisted not in the sacrificing of hecatombs of bulls, nor in burning piles of incense and fragrant herbs, but in ascertaining for oneself and in teaching others the mistakes of sick mortals, the true laws of health and hygiene, and something of the goodness, power and wisdom of the Creator, who had abundantly supplied every living creature with what was best and most convenient for its use, and who sustained all by his bounty. They taught that the problems of the true physician are very simple, yet very difficult. He meets with distress, pain, and disease everywhere, and the remedies are spread broadcast over the world, within the reach of every hand, and trodden under every foot. But how to apply them? Simply with an humble, intelligent, observant and honest spirit. The whole practice of medicine originally rested entirely upon pure observation, and the records on the votive tablets were open to all. There was no mystery, no concealment, no unwarranted pretensions, no exaggeration, and very soon a prodigious quantity of facts were accumulated, and some correct principles were quickly advanced. The greatest difficulty was to contend with the credulity and superstitions of the age, which after all were not greater perhaps than they now are. It is to the credit of real physicians that few or no

supernatural cures have ever been attributed to those who applied themselves honestly and industriously to the study and cure of disease. They have always remained steadfast against the illusions of magic, witchcraft, astrology, mesmerism, etc., and a broad and continuous stream of progressive and scientific medicine can easily be traced amidst the prevalence of the greatest charlatanry, bigotry, superstition, and credulity in the populace. They remained firm when Pythagoreans, Cabalists, Gnostics, and Essenes all dipped in the mysterious and lucrative practices of superstitious exorcisms, amulets, charms, etc.

They had to contend with the Emperor Vespasian, who pretended to cure blindness with his spittle, paralysis and enlargement of the liver and spleen by the touch of his royal toe. Against Appolonius, who claimed to raise the dead. Against the devotion to magic by the Emperors Titus, Aurelius, and Severus. Against those like Marinus, who by long fasting and constant prayer thought they had received the power of expelling all diseases. Against all Europe, which once descended to the absurdity of Egyptian and Persian idolatry, in the reverence paid to amulets, talismans, charms, and an unreasoning belief in relics, in the delusions of astrology, and the credulity and imposture of the royal touch. Against the apparently miraculous effects of absurd ceremonies; for in times of pestilence a dictator was elected for the sole purpose of driving a nail into the wall of the temple of Jupiter, and the effect was palpable and instantaneous, for while the populace imagined that they had propitiated an offended demon, or so-called god, their faith diminished their susceptibility to disease by appeasing their own fears. It required a long course of discipline, gained by the frequent recurrence of pestilential diseases, to eradicate this and other absurd procedures, for even the great Pericles wore amulets about his neck; and Aristides the Just placed confidence in soothsayers. He was the dupe and victim of knavish men for ten successive years; he was alternately purged, vomited, and blistered; made to walk barefoot under a burning sun in summer, and in winter he was directed to bathe his emaciated body in an

icy river; finally, he was ordered to lose 120 pounds of blood, and this opened his eyes. This reminds us of some of the pranks of modern spirits. Cato the Censor relied on the divining rod and incantations to reduce dislocations of the hip, and advised cabbage in all diseases. Even Popes Benedict 9th, John 20th, and the 6th and 7th Gregories openly avowed their belief in sorcery. Also King Pyrrhus, the Emperors Hadrian and Vespasian, and Mahomet believed in the royal touch. In the 11th century (A. D. 1026), Edward the Confessor revived this practice, and was followed by Philip the 1st of France and St. Louis; whilst James 1st even essayed to cure the hopelessly blind. Charles the 2d touched 92,107 cases in twenty-one years, or nearly 4,400 per year, and was followed by Henry 7th, the queens Elizabeth and Anne, and by George the 1st. These illustrious persons, commencing with enthusiasm, credulity and superstition, finally descended to the imposture of forcing their sergeant surgeons to select those cases only which presented signs of recovery; but soon these men, led by Drs. Becket and Wiseman rebelled against this degradation of their art; still it required several generations to teach the monarchs of England, by the adverse influence of numberless failures, how to emancipate themselves from the degrading duty of maintaining the fanatical ceremony of the royal touch. Finally, even the glamour of majesty itself could no longer inspire amazement enough, and the custom was abandoned when true physicians had rendered it ridiculous in the eyes of all men. At one time European physicians had to contend with 7,000 interpreters of dreams. Even the learned and pious Erasmus once attributed his recovery from a dangerous illness to the intercession of St. Geneveva, to whom he addressed an ode; although he was regularly attended by William Cope, the most skillful physician in Paris. At another time he abandoned the Saint and Dr. Cope, and relied upon the quack Paracelsus, who nearly killed him. Wesley attributed his cure to a brown paper plaster of egg and sulphur, and not at all to Fothergill's prescription of four months' repose from his labors, living in the country, milk diet, and horse exercise. Sir Christopher Wren

dreamed of dates, ate them freely, and supposed that they cured him of pain and disorder in his kidneys. Bishop Hall, one of the most learned and amiable men of his time, said that "old wives and the stars were his counselors; charms were his physicians, and a little hallowed wax an antidote to every ill." Lord Bacon thought that three grains of nitre taken every morning would prolong life beyond its natural period, but died at sixty-six, although he had persisted in this practice for thirty years.

Practical physicians had to contend with credulous astrologers and laymen of education, who parceled out the face of the heavens into twelve divisions or houses with as much precision as if they were laying out a Dutch garden; and apportioned the principal planet in each division as the lord of the house. It seemed of no consequence that some projected their lines in one direction, and others in another, so that the houses became mixed, and the lines crossed each other in a complex and arbitrary way as in a kaleidoscope or Chinese puzzle. Mars and Saturn in conjunction were gravely stated to cause pestilential disease. Lead colic was attributed to a new star which had made its appearance in the constellation Cassiopeia; and Astrology was the vulgar oracle which was often consulted before a dose of medicine was given. Syphilis was supposed to have arisen from a peculiar conjunction of Mars and Venus. Eruptions of Mount Vesuvius, earthquakes, famine, the overflowing of the Tiber, the invasion of the Goths, the plague which broke out in Egypt and was conveyed to Constantinople, and from thence to Italy, all were attributed to the presence of comets, and a peculiar arrangement of the stars.

But by far the most formidable antagonist of the profession was Paracelsus in the 15th century, and his influence is still powerful at the present time, for he was the founder both of the mesmeric and homœopathic sects. His claim to be the first of the magnetizers can scarcely be questioned, and from his time there was a regular succession of mineral magnetizers until Mesmer appeared and gave a new feature to the delusion. Paracelsus assumed that the magnet was the philoso-

pher's stone, which could transmute metals, soothe all human suffering, and arrest the progress of decay. He also used a stone or crystal which he called *azoth*, said to contain magnetic properties, and to cure epilepsy, hysteria, and convulsive affections. He originated the weapon salve, which Parson Foster says the devil himself gave to Paracelsus, he to Baptista Porta, he to Dr. Fludd, he to Sir Kelemn Digby. Valentine Greatrake was next in order of the magnetizers; then Father Hell, a professor of astronomy, in 1771 and 1772; and finally Mesmer in 1774, who became the founder of animal magnetism and modern spiritualism. He opened most sumptuous apartments in Paris, and had the impertinence to apply to Marie Antoinette for 500,000 francs in order to continue his experiments at leisure, and wished a commission appointed by the Academy of Sciences to examine into the merits of his system. The principal physicians of Paris, with Benjamin Franklin, Lavoisier the chemist, and Bailly, the historian of astronomy, were upon this commission. Mesmer only died in 1815, aged 81.

He was followed by the Marquis of Puysegur, who magnetized an elm tree; and by the Chevalier Barbarin, whose fanatical followers increased rapidly in Germany and Sweden.

In 1788, Dr. Marmaduc, in England, deceived 127 gentlemen, ladies, surgeons, physicians, clergymen, members of Parliament, bishops, barons, baronesses, earls, dukes and duchesses. Hannah More had sense enough to denounce them as demoniacal mummeries.

Holloway and Loutherburg sometimes had 3,000 persons crowded about their houses, waiting to gain entrance, at three guineas a ticket.

In 1798 Perkins and his tractors came in vogue.

Drs. Haygarth and Falconer exposed him with wooden tractors, and published a small volume "On the Imagination as a Cause and Cure of Disorders, exemplified by Fictitious Tractors."

But Perkins was followed by the well-known Deleuze in 1813, who advised his followers to forget for a while all their

knowledge of physics; reject from their minds all objections which might occur; and not to attempt to reason for at least six weeks.

Paracelsus also originated or revived the homœopathic doctrine in the 15th century—he says the law *contraria contrariis curantur* is false, and never did hold true in medicine—that a hot disease had never been cured by cold remedies, nor cold diseases by hot remedies. But it is well done, says he, when we oppose like to like. Know all men that like attacks its like, but never its contrary.

He was too shrewd a quack and impostor to confine himself to the law *similia similibus*—he used lead and other cooling and astringent remedies in fever; adopted tartar emetic from Basil Valentine, who had discovered it over 100 years previously; carried the use of opium, which had been in vogue from the 1st century onwards, to greater lengths than it had ever been employed before; and used mercury in the most reckless manner, as it had just been noticed that workers in quicksilver recovered from syphilis without other medication.

Hahnemann came under the influence of Mesmer in Vienna, in 1777, and probably got his notions about potentizing and magnetizing his remedies by rubbings and triturations from him. The Tartar physicians, or Llama doctors, have long superseded infinitesimal doses, as, if they do not happen to have any medicine with them, they are by no means disconcerted; for they merely write the name of the remedy they wish to give on a little scrap of paper, moisten this with the saliva, roll it up into a pill, which the patient tosses down with the same perfect confidence as he would aloes, assafœtida, or any other remedy. To swallow the name of a remedy, or to take the medicine itself, say the Tartar physicians and patients, comes to precisely the same thing. If paper is not at hand, the name of the drug is written with clay or chalk upon a board, which is then washed off, and the patient swallows the liquid.

How different from all these mummeries were the first great rules of the medical profession. It was at first merely

assumed that remedies which have cured a given disease must be equally efficacious in identical cases, and may be very useful in similar diseases. Thus far the best physicians of ancient times had speculated very little on morbid phenomena, or the effects of remedies. They contented themselves with observing which medicines benefited or cured certain diseases, and then employed them in similar cases.

The second therapeutic law was: There must be an essential, even if not evident, antagonism between the whole or part of the actions of the remedy and the disease; and that the curative virtues of the remedy must be in opposition, real or direct, with the cause or principle of the disease.

The third therapeutic law was: The remedy must *differ* in some essential manner from the action of the disease, and that all correct medical treatment is *alterative*. At first an unlimited extension was given to the word *contrary*, so as to include not only those things which are endowed with opposite elementary qualities, as heat and cold, dry and moist; but also all things which differ among themselves in any way. But it was proven that this was merely and illogically to make it a synonym of the word *different*. Next it was easily seen that as antagonism is merely the greatest degree of difference, all other and lesser degrees must also be operative in their spheres; and although the best cures might take place where the antagonism was absolute and complete, yet that very good results might follow when the antagonism was only partial and incomplete. Next it was noticed that some substances which closely resemble each other in their action, like the caustic alkalies and acids, often contain a radical difference or antagonism; and finally it was admitted that all resemblance includes some difference. Renouard says, in his "History of Medicine," p. 107, that from the very commencement the law *contraria contrariis curantur* was not universally adopted. Thus, in the book entitled "Ancient Medicine," written before the time of Hippocrates, and which is one of the most philosophic of the Hippocratic collection, several paragraphs are devoted to the refutation of exclusive reliance on this dogma. We there read: Diseases are some-

times cured by contraries and sometimes by remedies which are different, be the difference great or slight.

This is an important point, for at a later period Galen again assumed that diseases were only cured by their contraries, and Paracelsus and Hahnemann that they can only be cured by their similars, and thus founded one-sided and exclusive systems.

The honest and ancient physician was truly thankful for his frame, his brain, and his senses; thankful for every faculty of his mind and body; thankful for every vegetable, animal, or mineral medicine; thankful that the Creator had implanted in so many substances reliable medicinal virtues, which could be more or less easily ascertained; thankful that he knew how to use them in simplicity and honesty, without a weak and meretricious reliance upon charms, mysterious ceremonies, incantations, and mummeries; thankful that they could be made to yield up their virtues, in simple decoctions or infusions, or could be preserved in wine, oil, or honey.

At this early age many physicians would be bound to no absolute and unchangeable code, but merely pledged themselves to act according to the best of their ability and judgment—to abstain from whatever was manifestly deleterious, mischievous, or corrupt; to give no deadly medicine, nor allow it to be given; to produce no abortion, perform no castration, or useless mutilation; effect or countenance no seduction; divulge no secrets of his patients; but pass his life in the diligent and faithful practice of his art in purity and charity to all.

True medical history is not the mere record of squabbles between opposing sects, nor of varying and conflicting modes of practice; although doctors, like other mortals, often disagree; but is the record of almost continuous progress. A persistent stream of scientific medicine can be traced midst the prevalence of the greatest charlatanry and bigotry; and there has never been a complete solution of the continuity of medical truth and science.

Long before the time of Hippocrates the statues of the Esculapian god were represented as a bearded and aged

man, indicative of experience and wisdom; sometimes bare-headed, sometimes crowned, as representative of the storms and trials through which he had passed, or the victories which he had gained; sometimes erect, as the good physician requires no support but an approving conscience and the blessing of God; sometimes leaning on his staff, around which a serpent is seen winding in spiral folds, as emblematic of the dreadful and poisonous influences which he could control for the benefit of mankind; sometimes the staff was knotted, to indicate the difficulties of practice, and the hard blows which he often had to inflict upon refractory patients and obstinate diseases; sometimes he is alone, as if the medical art was all sufficient, but more frequently attended by Hygeia, robed in white, as indicative of the purity, simplicity, orderliness, and cleanliness of hygienic rules. Not unfrequently a noble child was placed between Esculapius and Hygeia, as representative of that innocency, beauty, health, and fruitfulness which Nature and Hygeia can alone bestow. Sometimes the genius of medicine was represented sitting, pensive, alone, with its fingers pressed upon its lips, as if admonishing its votaries to solitary study, deep thought, and cautious utterance; sometimes a faithful dog lay at its feet, or a gallant cock was at its elbow. Arrayed in all these symbolical devices, how grandly was the ancient idea of the true physician portrayed, viz., sage, modest, pure, faithful at night, vigilant in the morn, courageous and discreet at all times, wise, fatherly, kindly, cleanly, and abstemious—the true preventer and curer of disease and pestilence.

CAN CHLOROFORM BE USED

TO

FACILITATE ROBBERY?

By STEPHEN ROGERS, M. D.*

With the introduction of nitrous-oxide gas as a preventive of human suffering during surgical operations; with the demonstration, at a little later period, of a similar and even superior property in sulphuric ether; and with the discovery, almost at the same time, of the still more potent anæsthetic, chloroform, medical science took a long and proud stride in its race in the interests of humanity. Since the announcement of the discovery of the virtues of vaccinia by the immortal Jenner, nothing has filled the world with wonder and admiration like the announcement of the discovery of the anæsthetics by Wells of Hartford, by Morton of Boston, and by Simpson of Edinburgh; and these grand discoveries have ever since furnished themes for historians, sculptors, and poets. Human suffering, and hitherto inevitable anguish, were, to a vast extent, suddenly abolished, and humanity rejoiced.

It has been said, and I will not venture to say untruly, that the growth of human knowledge does not advance beyond the reach of corresponding developments of the original propensity to sin: hence, with the glories of the discovery of the anæsthetics just mentioned, arose the idea, among the ignorant and

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wicked, that the state of insensibility they produced afforded the most agreeable facility for all manner of unlawful acts which the instincts of self-respect and preservation would oppose. This was more notably the track in which criminal thought traveled, about the time of or soon after the introduction of chloroform.

The fact, publicly proclaimed, that there had been discovered a volatile and potent substance of a most agreeable odor, a few breaths of whose subtle vapor would put the strongest man to profound sleep, was seized upon by the criminal mind as the desideratum. But while—as the lethal agents of crimes, upon which the most thrilling newspaper romances were written, and written in considerable numbers—these criminal ideas of the use of narcotic vapors were widely practiced upon, their application to the narcotizing of persons upon whom robbery or other crime was to be committed was comparatively rarely made, a fact which holds good to the present day.

This disproportion between the cases in which an actual attempt has been made to employ anæsthetics for criminal purposes, more especially chloroform, and the reported cases of such attempts, was long ago quite extensively commented upon by the highest authority, in those days, in the world, at least in England, where this substance was, and since has been, almost exclusively used for surgical purposes. I allude to the late Dr. John Snow, of London, who, early in 1850, or a little more than two years after the discovery of the anæsthetic properties of chloroform, wrote that, "in two recent cases of robbery, it has been asserted that chloroform was used to render the victim insensible; and, although no real evidence has appeared of such having been the fact, yet the statement has gained great publicity through the papers, and even the sentences on the prisoners have apparently been rendered more severe by the allegation." He further remarks: "It is not difficult to understand how these reports of the criminal use of chloroform first gained currency. The early accounts of the use of this agent in surgery and midwifery, which appeared in all the papers, contained a description of its fruity odor, and its administration on a handkerchief,"

nothing being at the same time said of any disagreeable property it might possess, or of any unpleasant phenomena attending its administration, which would tend to caution against its indiscriminate and unskilled employment. In other words, the romantic aspects of anæsthesia were universally circulated, and its reality allowed to quietly slumber with the medical profession.

Hence, says Dr. Snow, "many persons, as I had experience, entertained the opinion that it might be used for effecting robberies." With this general imperfect acquaintance with the action of chloroform, he thought of the following explanation of some of the alleged cases of robbery while under its influence: It is reported in the papers that a person falls insensible suddenly in the street, and that on coming to himself he thought he recollected something about a handkerchief being applied to his face, and therefore the insensibility, from which he had just recovered, was attributed to chloroform. I quite agree with Dr. Snow in the opinion that, if such a report as this was anything more than the ingenious invention of the newspaper reporter, it meant to say that the individual in question had taken a fit of syncope or vertigo, the latter, perhaps, of that more permanent variety of dizzy-headedness which is not unfrequently met with in convivial persons, who sometimes break the silence of the small hours of the night with melodious declarations of intention not to "go home till morning." "These newspaper paragraphs, however," said Dr. Snow, "are very suitable ones for quotation; and, the idea having gained general credence, it is probable that we shall often hear of it from persons who have to account for being in disreputable places and company, and who, being shy of the usual excuse of having dined out, will have a recollection of a handkerchief over their faces." The exactness with which these early predictions of Dr. Snow have been fulfilled is well known to most of the profession practicing since his time, and the experiences of the law-officers, both in his and in other countries, fully attest the clear sagacity of their author. The idea, however, took deep hold of the public mind, and grew into such magnitude that, in 1851, about three years after the

introduction of chloroform, the subject of its criminal use became the theme of grave discussion in the British Parliament; Lord Campbell having in that year introduced his "Prevention of Offenses Bill," one of whose provisions was the making of "the unlawful administration or application of chloroform and other stupefying agents felonious." The following paragraph from Lord Campbell's speech, in advocacy of the adoption of his bill, will perhaps convey the nearest to a correct idea of the extent to which the public mind in that day had admitted the possibility of the felonious use of these narcotic vapors, especially that of chloroform.

Notwithstanding the published warning of Dr. Snow that the reported cases of criminal employment of chloroform were generally unreliable and totally fictitious, indeed did not furnish a single case of its successful criminal employment, Lord Campbell said: "A most respectable physician has done me the honor to write me a letter, in which he states that the fear arising from the use of chloroform in this way is altogether imaginary; that no strong man who makes resistance can possibly be chloroformed. While I believe that is true of the strong, I think that with those who are not strong, and not able to resist, chloroform could be employed most effectively for facilitating robbery. It has been said that a person thus attacked might refuse to breathe, and thus not inhale the vapor, or might turn away his head; but suppose a handkerchief, wet with the substance, is put to his face and held there, the man must breathe. Indeed, it already stands on record that, since the discovery of chloroform, persons have been convicted, before competent courts, of using that article for the purpose of robbery." It is obvious, from the tenor of this address, that even at that time, while the whole subject was comparatively new, Lord Campbell found himself obliged to abandon the idea that chloroform had been or could be used to facilitate robbery, without the knowledge of the person taking it. This abandonment, however, has not been general, but, on the contrary, the surreptitious application of and unconscious inhalation of the narcotizing vapor of chloroform for criminal purposes is still believed in by a very

large number of our people, and the doctrine of its possibility is still far too seriously regarded by our courts.

I have employed chloroform quite extensively for twenty-one years; have administered it to persons of all ages, from a few days to seventy years, to the male and to the female, to the weak and to the strong, to the drunk and to the sober, to the sane and to the insane, to the sleeping and to those awake, and I therefore regard myself as familiar with its action on the human subject in all conditions. This intimate and protracted acquaintance with the subject, a result of a much greater experience than Dr. Snow had when he wrote his papers from which I have quoted, leads me to unhesitatingly indorse his statements which were published more than a score of years ago. "It," says he, "can be readily shown that, were thieves and prostitutes to resort to the use of chloroform in the public streets, in the manner we see alleged, the attempt would only lead to their detection on the spot. The sensation of pungency in the nostrils and throat that is caused by this vapor, when in sufficient quantity to produce any effect on the sensorium, is so great and peculiar that no person can take a single inspiration without being aware that he is inhaling something very unusual. Chloroform, in fact, can never be administered without the consent of the party taking it, unless he be forced to take it, which is the case with children who are not old enough to be reasoned with. If a child be asleep when the process of inhalation is commenced, it nearly always awakes before being made insensible, however gently the vapor may be insinuated."

I will here remark that the real cause of this general disturbance and waking of the person to whom chloroform is being given during sleep, is not altogether from the pungent impression of the vapor upon the respiratory membrane, but is to be found in the fact that, if it be in sufficient concentration to produce anæsthesia within any ordinary period, it excites temporary closure of the glottis, and arrest of respiration (*Royal Medical and Chirurgical Transactions*, vol. xlvii., p. 329).

This result is almost invariable in its ordinary use, and

renders the temporary removal of the sponge or towel from the face, in order to allow respiration to be resumed, and the glottis time to become tolerant, a rule in practice. Of the practical truth of these statements no one can entertain doubt who has been much in the habit of using chloroform upon the human subject, or in experiments upon animals. Place a mouse, or rat, or rabbit, at the bottom of a tub, barrel, or glass jar, and introduce the chloroform vapor. At the first approach of this vapor, which is heavy and falls to the bottom, the animal, whatever may have been its state of torpor before, will at once flee from it, and by every possible means seek to extricate itself from the asphyxiating gas. This system of displacing the atmosphere of the room—in which the proposed victim may be lying—by the heavy vapor of chloroform, has not, as far as I know, often been attempted in criminal practice. I will allude to but two instances in which it is alleged to have been practiced with success.

The first case is to the effect that a California hotel-waiter has been accused, tried, and condemned to years of imprisonment, for rape committed, as is alleged, under the following circumstances: A waiter-girl at the hotel slept in a small room, and the alleged criminal, having learned from a druggist that chloroform introduced into the room through the keyhole, by means of a spray apparatus, would render the girl insensible, proceeded to practice upon this assurance. It is alleged that she was rendered insensible by that means, and that the crime was committed. An empty bottle, labeled chloroform, found in the accused's room, completed the circumstantial evidence. The totally absurd character of this allegation is apparent to every one instructed and experienced in the use and in the effects of chloroform. We will suppose, by way of illustration, that the occupant of such a room as this girl is said to have slept in may be anæsthetized unconsciously by the vapor of chloroform, thus introduced through the keyhole—though I regard it impossible. But how is the operator, especially if he be an ignorant hotel-waiter, without the slightest knowledge of chloroform, to know when unconsciousness is effected? How is he to tell when the victim is

ready for the breaking open of the door? Would the most skilled administrator of chloroform venture to fix the moment that the occupant of any given room would be anæsthetized by chloroform thus introduced into it? Would he dare to indicate the time which divides the period of unconsciousness to all outward impressions and violence, or perfect anæsthesia, from that of fatal poisoning from chloroform? Could he tell the moment that it should be discontinued in order to avoid this fatal consequence?

I apprehend that such as could would be difficult to find.

It is therefore obvious that, if this hotel-servant committed the crime alleged, under the circumstances sworn to, it must have been brought about by a most extraordinary combination of accidents, leaving out the question how he himself breathed, and consummated his crime, in the same atmosphere, or rather chloroform-vapor, which rendered his victim insensible, and kept her insensible for an indefinite time.

There are other considerations and physiological facts involved in this history, which make it, to my mind, so improbable that I should need much more than circumstantial evidence to convince me that there is a particle of truth in it.

The second case comes to me upon the authority of the late President of this Society, Mr. J. F. Miller, and, though the crime alleged was not effected by chloroforming the human subject, it is interesting, as showing the application of the agent to facilitate robbery. The circumstance is stated as follows: A watch-dog, having been shut up in a small room which contained a safe, was rendered insensible and harmless by throwing towels saturated with chloroform into the room from a high window, and, after thus securing the dog, the safe was robbed. The facts in evidence were the towels, still smelling strongly of chloroform, and the sickness of the dog during all the following day.

While it cannot be questioned that dogs and other animals may, in this manner, be made insensible, there is not the slightest proof that they are ever made so without an effort to escape from the room in which they are being thus anæs-

thetized. They are always conscious, and always try to escape, and, were they possessed of the intelligence of the human subject, always would escape, unless bolted in and beyond the hearing of the people living about them. While, therefore, chloroform may facilitate robbery when given in this manner to watch-dogs, it remains to be shown that it is possible to thus use it on the human subject. Upon the supposition that this was a case of the actual use of chloroform to narcotize a watch-dog, it affords the suggestion that, to prevent such results, very free openings through the floor of such rooms should be provided, so that the vapor of chloroform, which is heavy, might run down like water or carbonic-acid gas, leaving the air of the room uncontaminated. When the vapor of ether may be selected, it, being light, escapes from the upper parts of the room, and must therefore be introduced at the lower part of the room. I have no knowledge, however, that any criminal charges have been laid at the door of sulphuric ether. But all that has been said relative to the pungent, irritating, and suffocating effect of chloroform, is applicable to ether in an eminent degree. Therefore, these being the facts with reference to the vapor of chloroform alone, when introduced into the respiratory track, it may be easily conceived that if to them there be added the towel or handkerchief to the face—the usual method—wet in the cold and very irritating fluid, but few human beings sleep so soundly as not to be awakened by it at the instant, if they were not by the vapor alone.

Most assuredly, if it did not produce that result, no robbers need fear them, for they would not be likely to offer any opposition to even the removal of the clothes from their backs.

I am sustained in these views by much more modern writers than the one quoted.

The London *Lancet* for February of the present year (1871), in its editorial comments upon the newspaper story about a lady who went to her bedroom, and was seized by a man and a lad, who, applying a wet handkerchief to her nose and mouth, and rendering her insensible, completed a robbery

and escaped, leaving the lady to recover from her insensibility, which she did slowly, goes on to state that, although two medical men are stated to have concurred in the opinion that she had taken chloroform, it is far more likely that the lady in the case simply fainted from terror. The well-founded belief, he thinks, among the best-informed members of the profession, is so completely opposed to all such stories, that they are not to be credited, and he would be glad to see more of them thoroughly sifted, inasmuch as he has never heard of a well-authenticated case of robbery in which chloroform was used; and adds that the common narratives to this effect are often of those people who went into bad company of their own accord, and, having suffered consequences which involve some disclosure, have had recourse to imagination in order to conceal the truth.

The *American Law Review* for April of the present year (1871) furnishes the following account: "A man and his wife, living in hired apartments in London, induced a jeweler to send one of his shopmen to their apartments, with diamonds of very considerable value for inspection. While pretending to look over the jewels, the woman, it is alleged, went behind the shopman, and placed a handkerchief, saturated with chloroform or some other stupefying agent, over his mouth and nostrils, while the husband seized his arms. As he became senseless, they pinioned him and made off with the jewelry." Upon this history, the editor of the *Times and Gazette*, in the issue of March 18th of this year (1871), remarks that at the trial, "it was not denied that the shopman who was robbed was first made insensible with some narcotic vapor, administered by inhalation; and hence it is assumed that the felonious administration of narcotic vapors is a possible and a practical offense, against which Lord Campbell endeavored to legislate in 1851. We regret," he adds, "that no determinate inquiry was pursued at this trial, relative to the administration of the alleged narcotic vapor. What was it, and how long was the inhalation continued? Physical force is alleged to have been employed, the male culprit holding the victim while the female administered the vapor. The case differs in

this respect from many of the cases of alleged felonious use of chloroform, in which a handkerchief holding the narcotic was thrown over the face. The medical profession have often denied the possibility of producing insensibility by this last-named method, while they have admitted that insensibility could, of course, be induced if the person were to be forcibly held. This case presents, if true, the possible fact of felonious administration of a narcotic vapor; but, if true, we believe it to be the first case of the kind on record, and we beg the public to be reassured on this point, that no volatile substance can be used with felonious intent, unless there be sufficient force present to first pinion and then rob."

I do not find in the evidence furnished by the report, or by these editorial comments, any reason to accept this as a case in which there was the slightest effort made to resist the felonious assault, and I therefore reject it as the possibly first case.

I find but one well-authenticated case in which the attempt was made in good earnest to render sleep more profound for purposes of theft—as is inferred, though no proof is furnished of such intent. This case occurred in Kendal, England, in the latter part of 1851 (*London Medical Gazette* for November, 1851). The person upon whom this experiment was tried was awoke by a man attempting to suffocate him, as is alleged, by means of a rag steeped in chloroform. In spite of the disadvantage at which he was taken by his midnight assailant, his cries of "Help! murder!" roused the inmates of the hotel at which he was stopping, and, when assistance arrived, the intruder was found the worse off of the two—that is, the most anæsthetized. He, however, was subsequently severely dealt with, according to the report, and an editor of the time suggested that culprits of that class be in future put out of the way of repeating their acts by forcing them to take a fatal dose of chloroform. It has recently been reported in the newspapers, and I merely repeat it, without vouching for the reliability of the report, that a painter by trade attempted to chloroform the daughter of his employer, in Healdsburg, California, while she was asleep; but the strangulation awoke her,

and she screamed for help. He escaped by scrambling from the window by which he had entered the room, though not early enough to prevent recognition by the girl, upon whose declarations he was subsequently arrested and committed to jail, to await trial on a charge of attempt to administer chloroform, with intent to kill!

The histories of these cases very convincingly show that the felonious use of chloroform, or any similar substance, is a very unsafe proceeding. A more unpromising measure could hardly be thought of by the criminal classes. In speaking of this and other failures of attempts to commit robbery, aided by chloroform, Dr. Snow observes, with obvious justness, that they could hardly have been made by professional thieves, who have the advantage of belonging to gangs, who practice and try beforehand the means they employ, and who certainly would never be led by newspaper stories to use an agent so ill suited to their purpose as chloroform.

As a matter of instruction to those members of the Society who are not physicians, and therefore are not familiar with the uses and the behavior of chloroform, it may be well to here allude to some of the unpleasant attendants of the administration of this substance, and to some facts which make it an ineligible agent for the use of robbers:

1. As to its use to promote the greater security from the disturbance of the sleeper, even were that practicable, the very time that would be consumed in the gradual and cautious administration of the vapor—the only possible theoretical manner of accomplishing it—would so increase the danger of detection, that few thieves would think of employing it.

2. During the course of the administration of chloroform, whatever manner may be adopted, the patient or subject, as a rule, becomes excited, often very violent and turbulent, with an irrepressible propensity to sing and shout, which is often so loud as to alarm the inmates of the whole house. He is in a state of wild, chloroformic intoxication. The exceptions to this rule are so few that no prudent thief would think of running the risk of not meeting one of those exceptions.

3. Supposing the two preceding obstacles overcome, and the victim thoroughly quieted into a narcotic sleep, a third and very frequent complication arises. He begins to vomit, and while he generally does not make much noise about it, still he may, and he always requires attention, lest fatal strangulation occur. It may be presuming too much to credit this class of criminals with any care whether their supposed chloroformed victims die of strangulation or not, but I think that a common-sense view of the case must lead to the conclusion that, even were chloroform an available agent in facilitating robbery, the knowledge among the criminal classes that the abandonment of their victim with a towel still over his face, and to the liabilities of vomiting and strangulation, would often add the crime of murder to that of robbery, would have great effect in deterring them from the further employment of it.

But, in the absence of the slightest proof that chloroform has ever been given successfully to facilitate the robbery of a person who was already sleeping, and in view of these inherent difficulties in the way of its employment for such purpose, together with the history already adduced of the total failure of the only authentic attempts to thus use it, all cases in which such use of this, or similar substance, is alleged to have occurred, should at once excite suspicion that, either the party making the allegation is laboring under an honest delusion, is falsifying for the purpose of concealing the fact that he was in disreputable company, or engaged in some shameful act, or that he is an accomplice or the real robber.*

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* After this paper had been sent to the editor, the following example of newspaper audacity, in the matter of groundless statements relating to the use of chloroform in robbery, appeared in one of the evening journals of this city :

"On Saturday night, August 18, 1871, the house No. 115 East Seventy-first Street was entered from the rear-basement window, by breaking out a pane of glass, pushing back the bolt, and raising the sash. From the dining-room a quantity of silver plate was taken, and the plated ware broken up and strewn upon the carpet. The sleeping-room of the proprietor (who was alone in the room) was next entered, the key having been turned back with forceps, and chloroform administered to him. His pockets were rifled of one hundred and fifteen dollars in cash; his studs, sleeve-

As illustrations tend to fix facts and principles in the mind, I will now adduce the history of a very recent case, to show

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buttons (taken from a shirt he had laid aside for the night), and gold eye-glasses, and also some expensive wearing-apparel of ladies, were stolen. Leaving this room and locking the door behind, with the key on the outside, the thieves next entered the apartment on the next floor, in which two young ladies were sleeping, by forcing back the key with forceps. Chloroform was here also used by the robbers, and the occupants robbed of a gold watch and chain, gold bracelets, rings, silk dresses, and money. This room was also relocked, and all the upper chambers were ransacked, the family having been dosed with chloroform. Late Sunday morning the family awoke, all severely suffering from the effect of the drug administered by the thieves."—*Evening Post*, August 22, 1871.

To ascertain what was the truth which had given rise to this editorial or contributed statement, that chloroform had been employed by the thieves, I visited the family living in the house No. 115 East Seventy-first Street, and from them learned that it is untrue ; first, that all the family awoke suffering severely on Sunday morning—that, on the contrary, they were all very well, though somewhat puzzled and bewildered at the discovery of their losses, and to find themselves locked in their rooms ; and, second, that one of the young ladies above-mentioned, being of a highly nervous temperament, was very unusually agitated and nervous most of the following day—a natural consequence of the alarm and other emotions such a night's exposures, escapes, and losses, would give rise to in a person of such a temperament.

There was but one circumstance alluded to by the family, as, in their opinion, possibly indicating that chloroform had been used, and that was the presence of a fine powder or dust upon some articles in the room where the young ladies slept. Under the erroneous impression that chloroform dries, leaving a powdery substance upon the surfaces wet with it, this family and their friends, knowing no better, inferred that said powder or dust indicated that chloroform had been used. Now, as their original proposition that chloroform dries, leaving a deposit of powder, is untrue, their conclusions have no support, and must be rejected. There is no pretense that even the presence of the powder showed that chloroform was used upon the proprietor of the house, or in his room. Therefore, there is not a vestige of proof that chloroform was employod in this robbery ; on the contrary, so far as the newspaper statements may be accepted as correct, those operations of the thieves which were most calculated to arouse the sleeping victims were performed before the alleged administration of the drug.

In short, this case is another and a typical illustration of the thorough unreliability of newspaper reports about the use of chloroform in facilitating robbery.

that the principles above declared, based upon an experience of a score of years, are still as unshaken as they were in the days of Dr. Snow. This case, fortunately, is one of the most instructive, with reference to the above principle, of any which has come under my observation, because it first gives the fictitious chloroform plea, and subsequently the true account, as developed by investigation :

Immediately after the robbery of a large sum of money from a prominent express company, a newspaper report says, the two employés in charge of the office whence the money was taken turned into their bunks soon after one o'clock in the morning. The double doors were fastened with a bolt merely, which played in sockets fastened to the inner side of the door with nails, and did not reach beyond an inch into the socket of the opposite door. Less than an hour after these two employés went to sleep, according to their own statement, a guard was sent to ascertain the cause of their non-appearance on their usual duties. He found the doors of the office ajar, and, on entering, discovered these employés sound asleep, and the floor strewed with papers. Failing to rouse the first one he reached, he turned to the other, and, after some vigorous efforts, succeeded in waking him. He then again commenced to work with the other one, and finally roused him from his deep sleep, discovering at the same time a small sponge near his face, which had been used in the administration of chloroform. The supposition was, that the first and most easily aroused took it first, and the other, who was much more deeply asleep, took it last, and the robbers left the sponge at his nose. The room was found thoroughly chloroformed, and it was discovered that the bolt in the doors had been strained, and the nails started by pushing from without inward.

When they were thoroughly awakened, it was ascertained that the keys of two safes in the room had been taken from one of their pockets, the safes opened, and the robbery accomplished. The chloroform was so effective that the sufferers still felt the effects on their systems thirty-six hours after.

This is an account eminently fitted to foster popular impressions upon this subject. Almost any jury would decide that these unfortunate employés had narrowly escaped death, having been well-nigh fatally drugged as well as robbed.

Within a week, however, we are furnished with an account of the other side of the story, which runs in this way: The alleged chloroformed employés, after being roused with the labor described, and seeing a number of waybills scattered around the floor, remarked that they must have been robbed, and, though sleeping heavily when found, as soon as roused one of them declared his opinion to be, that they had been chloroformed, and immediately produced a small sponge lying near him, in evidence that such had been the fact.

The bolt fastening the door was found bent in a part which showed that it could not have been done by forcing the door from without.

These facts were soon followed by the discovery that a brother of one of the alleged chloroformed employés had suddenly disappeared from the locality, and subsequently to the discovery that this fugitive brother was in the possession of several thousand dollars of the stolen money; and almost at the same time the remaining brother, who was the chief of the two alleged chloroformed employés, makes a full confession of having been one of the principals in the robbery. This confession, though said to be full and truthful, is a remarkable mixture of truth and falsehood, such a medley as only one totally ignorant of the physiological effects and the clinical behavior of chloroform would concoct. One, indeed, the principal of these alleged chloroformed employés, stated that, on the night of the robbery, he remained up after his companion was asleep; then, dosing him with chloroform, proceeded to perpetrate the robbery. After accomplishing this, his brother, an outsider, joined him, and took all of the stolen money.

Putting it into his carpet-bag, carefully excluding such packages as were not negotiable, he proceeded to give the remaining thieving brother a dose of chloroform, and then decamped, carpet-bag and all. A more absurd and ill-con-

certed attempt to employ the chloroform plea to shield from crime has rarely been witnessed. There is not the slightest probability, certainly no proof, that the employé first asleep took any chloroform at all. Why should he? The principal thief, his companion, had the keys of the safe in his pocket, and did not need the use of the anæsthetic to give him easy access to the treasures, and there is no more reason why the thief should have taken the dose he declares he did, when his brother took charge of the carpet-bag of money. It is therefore very manifest that, if any chloroform was taken at all, it was voluntarily taken for appearance' sake, and therefore all who took it were accomplices in the robbery. This is a typical example of the blunders that criminals, who are unacquainted with the matter, will make in their attempts to falsely account for their crimes, by attributing their apparent unconsciousness of them to chloroform, or some similar agent.

There not infrequently come to us accounts of the chloroforming and robbing of families, including perhaps the watch-dog. These stories sometimes are related by very honest and thoroughly convinced, if not reliable parties.

The present state of knowledge upon this matter authorizes us to presume that in all such cases, though the rooms occupied by the persons robbed may smell strongly of the substance, and they may even be affected to nausea by it, neither insensibility nor intoxication has been produced by it.

It should be taken for granted that robbery attended by such a circumstance has not been committed by a professional burglar and thief alone, but aided by a novice who is familiar with the habits of the inmates of the house or place, whether such inmates were men or dogs, and probably one who is in the employ and confidence of some party having the means of access to the place, the chloroform having been thrown into the room after the robbery, as a mere cover, and possibly used to disable the dog, if there had been one.

In short, all robberies attended by evidence that chloroform has been in any way or at any time used, should be regarded as having been managed by persons in the employ of the

parties robbed; but it would be mere presumption to regard the chloroform as having been an efficient agent in the operation, except perhaps to kill or quiet a watch-dog.

All such forgeries are easily detected by consulting experts on the subject, who are generally able to show to the satisfaction of any court that what may at first appear as a plausible and clear case of the felonious use of anæsthetics, is a barefaced bungle and imposition.

With reference to the use of these agents for unlawful purposes against the will of the person, there are but few authentic cases to adduce as examples, but they also show that the allegations relating to them should not be accepted till the circumstances attending them are carefully sifted. One of the earliest, if not the first case of this kind, I find recorded in the *London Medical Gazette* for November, 1850: A young man returning from a dance, late at night, in company with a young woman, induced her to accompany him into a stable-yard. He there took a bottle of chloroform from his pocket, and poured some on a handkerchief, which he applied to her face. She at once tore the handkerchief away, and called out in such a manner as to bring a policeman to her assistance, and also secured the offender, who is reported to have subsequently soothed and finally subdued the rebellious propensities of this maiden by other influences less anæsthetic, but more agreeable and charming than villainous chloroform.

The case which occurred at Kendal, England, already referred to, may also be adduced in proof of the difficulty of forcing persons to take chloroform under any circumstances.*

The two versions of the express-robbery story just given,

* It is said, though I have been unable to obtain the article, that some physician of Baltimore has recently published an advocacy of the doctrine that the forcible administration of chloroform for any purpose, and particularly for criminal purposes, requires a variable amount of force, depending upon the person attacked, thus rendering several accomplices necessary; and also the doctrine that the attempt to administer it to a person sleeping would almost certainly awake him. Hence the author regards the use of chloroform for purposes of robbery as mostly ideal.

the one by the thief himself, and the other resulting from subsequent investigation, are probably not more discordant than would be the truth and the manufactured reports of most of the alleged crimes committed under the influence of anæsthetics. Though sufficiently fictitious, some of these reports are even more romantic than this robbery story. In one of his communications on this subject, Dr. Snow adduces the following highly-imaginative history of the alleged felonious use of chloroform, as an illustrative one of this class. It has, besides, the merit of furnishing a key to the motive of many of these alleged offended persons in fabricating these stories:

It appeared, in the evidence before the court, that the offender suddenly passed a handkerchief across the face of the complainant in the street; the two afterward went into a public-house, and were there seen drinking together. After this drinking, the complainant became insensible, and was robbed by the defendant. His insensibility was attributed to chloroform, supposed to have been on the handkerchief which was passed suddenly across his face before he went into the public-house to drink (*Medical Gazette*, November, 1850, vol. xlv., p. 327).

This, Dr. Snow very truly remarks, every one at all acquainted with the action of chloroform knows to be an impossible story.

Still more ridiculous are the recent published statements that a certain corner of a prize-ring was provided with a magazine of chloroform, ready to pour its torpefying spray upon the luckless pugilist who might be knocked into, or might voluntarily go "to grass" in his antagonist's portion of the field.

This ingenious bit of fiction may be highly satisfactory to those fellows who are casting about for methods to avoid fighting; and it is more generally acceptable than the plan just adopted of taking one of the bullies to the ring, and leaving the other one at home; but it totally ignores such well-established facts as those of the Kendal case, where a strong man struggles for some time with a weak one, and failed to produce anæsthesia, though the room is said to have

smelt strongly of chloroform. A recent distinguished writer in our own country, in treating of the credibility of the hitherto-reported cases of robbery under chloroform, says: "Several remarkable instances of robbery of persons designedly rendered insensible by chloroform have been reported in the newspapers of this country; although they may be authentic, we do not feel warranted in further alluding to them while unable to attribute them to responsible sources. It is obvious that a person may allege that he has been robbed or maltreated after being rendered insensible by chloroform, but also that the allegation may be false, and put forward so as to divert suspicion or awaken sympathy." (Wharton and Stillé, "Medical Jurisprudence," p. 501.)

Referring to the case of the jeweler's shopman, who alleged that the wife covered his face with a handkerchief, while the husband held his hands, it must be obvious to any one at all acquainted with the use of chloroform, that the theory of his allegation is preposterous. Would a strong man, determined to save himself from impending suffocation, stand passively, and allow a man and a woman to practice the administration of chloroform on him? He could at least have fallen down and turned his head away enough to have enabled him to scream for help, like the man at Kendal, or the young woman in the stable-yard. From all the light which practical experience and the investigation of crimes throw upon this case, there seems little doubt that the shopman was a party to the robbery.

It is at least a very suggestive case, as showing that there is great liability to err on the part of courts in accepting this kind of allegation, unless, upon detailed inquiry into the circumstances and the manner of the alleged giving of chloroform, they be found consistent with the thoroughly well-known facts and phenomena uniformly attending the administration and the action of this agent.

Any inconsistency such an inquiry might develop should be accepted as indicating honest delusion, studied deception, or a complicity in the crime.

I feel convinced that such a test would exclude at least

nineteen in twenty of all these cases of the alleged felonious use of chloroform and similar agents as mere fictions.

But as there may be, as in times past there has been, a popular disposition to accept the statements made by the alleged victims of the felonious use of chloroform, and by their friends, as true, notwithstanding what I may say or other authors may say to the contrary, with the single motive of bringing before the public and the legal profession all that may be true and well-authenticated in this matter, I have challenged, and I now repeat it, the production of any proof of the successful use of chloroform on the human subject to facilitate robbery in a single instance. As I have before had occasion to say, when any such proof is furnished me, that robbery has ever been committed by means of the use of chloroform received unconsciously by the person robbed, or given forcibly against the resistance of the person robbed, I will be ready to admit it, and this society will promulgate the fact to the world.

And I cannot conclude these remarks in a more truthful and forcible manner than by adopting the language of Dr. Snow, who so long ago said: "The public have been greatly and unnecessarily alarmed about the employment of chloroform by thieves; what they really have to dread is, that robbers will still resort to the old means of the bludgeon, the pistol, and the knife, and not to one which, like chloroform, allows the victim so good an opportunity of escape, and themselves so great a chance of detection."*

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* Since the first publication of this paper, Dr. Cucuel, of Montbeliard, France, was required by a judge of one of the Courts to reply to the following question:

"Are narcotics, administered in liquid or gaseous form, able to produce anæsthesia, in those to whom they are given, so profound that a criminal violation of their person may be committed without waking them?"

To this he answered affirmatively, but declared his disbelief in the possibility of anæsthetizing by chloroform a sleeping person without waking the person up. Though the judge did not name any narcotic, it appears that the doctor understood him to refer to the ordinary anæsthetics, and that the question comprehended their exhibition during natural sleep. Hence one of his replies is: "It is impossible to anæsthetize a person with chloroform during natural sleep, without waking him up." Dr. Bolbeau, of Paris, determined to test the truth of this declaration, and during 1872 and 1873 instituted experiments on twenty-nine persons, of all ages, and mostly suffering from severe injury, operation, or disease. The chloroform was applied by holding a towel rolled in form of a cone near the nose. He reports that about one in three were anæsthetized without waking. Every possible preliminary preparation was made for, and great dexterity employed in these experiments, from which he concludes that, though difficult, it is possible to anæsthetize a person during natural sleep without waking him. As to the application of this fact to facilitate crime, he concludes that, while chloroform given during natural sleep may facilitate the commission of certain crimes, it is nevertheless probable that the conditions favorable to

THE MEDICO-LEGAL VALUE OF CONFESSION

AS AN

EVIDENCE OF GUILT.

By WILLIAM A. HAMMOND, M.D. *

It is a very wide-spread opinion that the confession of an individual accused of an offence is the very best evidence which can be adduced of guilt. This view is not only entertained by the community at large, but is held by the common and statute law, and enforced by numerous judicial decisions. Thus Blackstone declares that "a confession of the prisoner taken out of court before a magistrate or person having competent authority to take it, and proved by two witnesses, is sufficient to convict him of treason." † In a note, Mr. Archer Ryland states that—

"It appears now to be an established rule, that a full and voluntary confession by the prisoner, of the overt act charged against him, is of itself sufficient evidence to warrant a conviction."

such a use of it will rarely present themselves to those committing crime (BULLETIN, Tome III. Société de Médicine Légal de France, 1873–1874, P. 113). I have heard this report of Dr. Bolbeau alluded to as disproving the principles urged and advocated in this paper. It is manifest, however, that it contains nothing to justify such a view. I have never disputed the possibility of anæsthetizing a sleeping person with chloroform without waking him. This is all Dr. Bolbeau has shown to be possible. My challenge to produce one well-authenticated case of its successful use upon a sleeping person to aid in robbery, or even rape, has not been accepted by the Doctor's report. It still stands an unanswered invitation. If any proof were needed of the truth of my remark, that "cases in which the victim sleeps so profoundly as not to be roused by the suffocating vapor, would sleep on undisturbed by robbers, however numerous or noisy, and therefore not need chloroform," this report of Dr. Bolbeau furnishes it. So far from disturbing the doctrine I have advocated in this paper, Dr. Bolbeau has added greatly to its legal and scientific strength and soundness. STEPHEN ROGERS.

July 20, 1874.

* Read before the New York Medico-Legal Society, February 9, 1871.

† Commentaries on the Law of England, vol. x., eighteenth edition, with the Last Corrections of the Author, and Copious Notes. By Archer Ryland, Esq., of Gray's Inn, Barrister-at-Law, London, 1829.

And again:

"It seems to be now clearly established that a free and voluntary confession by a person accused of an offense, whether made before his apprehension, or after; whether on a judicial examination, or after commitment; whether reduced into writing, or not; in short, that any voluntary confession made by a prisoner to any person, at any time or place, is strong evidence against him, and, if satisfactorily proved, sufficient to convict without any corroborating circumstance."

And again, in referring to several decisions in support of the practice, Mr. Ryland says:

"A prisoner's confession is sufficient ground for a conviction, though there is no other proof of his having committed the offense, or of the offense having been committed, if the confession was in consequence of a charge against the prisoner."

The practice which prevails in courts is stated in all works upon evidence, and is to the effect that no stronger testimony to the guilt of an accused person can be obtained than the voluntary confession of such person.

It is, however, a well-recognized principle that a confession, to be of any legal value, must be made without constraint, and without any promise of reward or immunity. This, however, is quite a modern idea, even in public law, and is not yet entirely obsolete in social life. It is not very many years ago that supposed criminals were tortured till they confessed, or died protesting their innocence; and it is at this day no uncommon thing in the relations of man, as parent or master to child or servant, to endeavor to extract confession by torture of some kind.

The principle upon which the existing laws, in respect to confession, appear to be based is, that the innate eagerness of man to preserve his life, his health, his liberty, or his property, is so overpowering, that it is not at all probable he will say anything calculated to put either of these attributes in jeopardy, if he be innocent, and that, consequently, when he does confess to the commission of an offense, the punishment of which is death, mutilation, imprisonment, or forfeiture of estate, he must necessarily speak the truth.

I propose in this paper to show that it is no uncommon thing for individuals to confess to having perpetrated crimes of which they were either certainly or probably innocent, and that there are forces in operation in the human mind which may prompt to the making of a false confession, even when by so doing, life, liberty, or property be put in danger.

Thus we know that, not very many years ago, thousands of individuals confessed to being witches, and to having intercourse with the devil, and this with the full knowledge that such admissions consigned them to torture and death. Many cases are on record in which persons have confessed to crimes for the purpose of saving the really guilty person from punishment. Many others have voluntarily come forward, in times of great public excitement, in regard to some crime, and have apparently courted imprisonment and death by acknowledging themselves to be the criminals, when very slight investigation has shown that they were liars; and physicians constantly meet with patients, not obviously suffering from mental derangement, who confess to having perpetrated offenses which, if really committed, would send them to the prison or the gallows.

A little reflection, therefore, will doubtless suffice to convince all who hear me, that confession, unsupported by collateral evidence, is very unreliable testimony.

A few years ago, my attention was particularly drawn to this subject by a very remarkable case, which occurred in England. The details are so interesting, and present so many points for reflection, that I am sure I will be pardoned for stating them at length:

On the morning of the 30th of June, 1860, Francis Saville Kent, four years old, was found murdered in an out-house on his father's premises, Roadhill House, Wiltshire. The throat was cut to the bone, and there was a wound in the chest which penetrated to the heart. The corpse was wrapped in a blanket which belonged to the bed in which the child had slept the night before; a piece of flannel, such as women sometimes wear over the chest, was found under the body, and a portion of a newspaper, which had evidently been used

for wiping a bloody knife, lay upon the floor. Nothing else was discovered calculated to indicate the perpetrator of the deed, and even the ownership of the piece of flannel could not be traced.

Mr. Kent's family, including servants, consisted of twelve members. The murdered child, a younger one, and the nurse, Elizabeth Gough, slept in the nursery, each occupying a separate bed. Early in the morning the nurse awoke, and found the little boy's bed empty; but, supposing that Mrs. Kent had come into the room and removed him, she gave herself no uneasiness on the subject, but went to sleep again. About half-past six she again awoke, and, arising, went to Mrs. Kent's bedroom, and knocked at the door. Receiving no answer, she waited till her master and mistress had also risen, and then the discovery was made that the child was not in the house. Some time afterward the body was found as I have described.

Before going to bed the night before, Mr. Kent had seen that all the doors and windows of the house were securely closed. The house-maid, in coming down stairs that morning, had found the drawing-room door and one of the windows open. Supposing that they had been forgotten, or opened by some member of the family for the purpose of cooling the room, she had considered the matter as of no importance, and had, therefore, raised no alarm. There was no evidence of any one having forced an entrance into the house. On the contrary, it was very certain that the murder had been committed by one or more of the inmates, or by some one who must have entered the building and remained secreted in it till the deed was perpetrated. There were no blood-stains in the house or garden, no marks of any struggle, and no noises had been heard by any member of the family. Suspicions fell, by turns, upon Mr. Kent, the nurse, and upon a daughter of the former by his first wife; but nothing was discovered sufficient to justify the committal of either for trial, though there were one or two unexplained circumstances which, in the minds of some, connected the young lady with the murder. She had been heard to utter expressions of dislike against the murdered child, and had, on several occasions, manifested

some slight degree of jealousy in regard to him. A night-dress of hers was missing, and no satisfactory account was given of its whereabouts. But there was nothing more. As was very natural, she had shed tears when informed of the cause of her arrest, but had borne herself throughout the examination with wonderful fortitude, and apparently with the utmost consciousness of innocence.

For two years subsequently she went to school, and then, entering a semi-conventual order connected with the Church of England, remained in seclusion till the spring of 1865, when she voluntarily came forward, confessed herself guilty of her brother's murder, and was committed to take her trial for the crime. The trial took place. She pleaded guilty to the indictment, and, on her plea alone, without any further inquiry, and without the case being sent to the jury, she was sentenced to death.

From the report of the trial I make the following extract:

"At nine o'clock the learned judge took his seat on the bench, and the prisoner was placed at the bar. She stood firmly, but meekly, with her eyes cast down, and her hands clasped before her.

"Silence having been proclaimed, the deputy clerk of arraigns said:

"'Constance Emilie Kent, you are charged with the willful murder of Francis Saville Kent, on the 29th of June, 1860. Are you guilty or not guilty?'

"PRISONER (in a low tone).—'Guilty.'

"JUDGE.—'Are you aware that you are charged with having willfully, intentionally, and with malice, murdered your brother: are you guilty or not guilty?'

"The prisoner made some answer, but in so low a tone that it could not be heard.

"JUDGE.—'I must repeat the question: You are charged with having willfully, intentionally, and with malice, killed and murdered your brother. Are you guilty or not guilty?'

PRISONER (in a low tone).—'Guilty.'

"JUDGE.—'The plea must be recorded.' The plea was, accordingly, recorded.

"Mr. COLERIDGE (one of the counsel).—'Before your lordship passes sentence, I desire to say two things: First—solemnly, in the presence of Almighty God, as a person who values her own soul, she wishes me to say that the guilt is hers alone, and that her father and others, who have so long suffered most unjust and cruel suspicion, are wholly and absolutely innocent; and secondly, that she was not driven to this act by unkind treatment at home, as she met with nothing there but tender and forbearing love; and I hope I may add, that it gives me a melancholy pleasure to be the organ of these statements for her, because on my honor I believe them to be true.'"

The learned judge—evidently a kind and generous-minded man—then assumed the black cap, and, with great feeling, in which the prisoner joined with hysterical sobs, sentenced her, as his duty and the law required. And thus, without any inquiry into the character of the influences which had been brought to bear upon her, the tendencies of her disposition while in the religious institution, the sanity or insanity of her mind, her antecedents, or any other point which might have served to throw light upon the case, to lessen her criminality if really guilty, or to weaken the force of her plea if innocent, Constance Kent left the court convicted of the highest crime known to the laws of man. If innocent, her case is one more added to the long list of others—monomaniacs, ecstatics, enthusiasts, hysterical persons, and liars, who have confessed to the commission of offenses which they did not perpetrate; if guilty, she is, so far as I know, the solitary instance of an individual confessing to a crime, and being sentenced to death upon no other evidence than that of admission. Men and women, before this, have, in the face of overwhelming testimony against them, or while in a drunken debauch, or on their death-beds, or standing on the scaffold, with no hope of escape, or unintentionally, like the robbers and the cranes of Ibycus, confessed their crimes; but, if any criminal of sane mind has ever yet voluntarily supplied all the evidence which could consign him or her to an ignominious grave, the case has escaped my observation.

Such are the main facts immediately connected with this most extraordinary case, and which is rendered still more extraordinary from the real or supposed discovery of the criminal. That she may have committed the murder is beyond question; that she did commit it is, in my opinion, a matter of grave doubt.

At the time of the murder, Constance Kent was in her sixteenth year. Her mother had died a lunatic several years previously; and she herself, though described as a girl of a warm and generous disposition, was considered to possess a rather dull and sluggish intellect. At the time of the trial it was stated that she was an exceedingly plain-looking young woman, with a broad, full, uninteresting face, which wore more an expression of stupid dullness than one of intelligence. She had full, large eyes, glanced uneasily around her, as if expecting some danger, and had, apparently, none of that cunning and shrewdness which it would be supposed she must necessarily have possessed.

When arrested soon after the murder, her behavior was, as I have said, in the highest degree admirable. She evinced a proper amount of feeling, denied all knowledge of the crime, and, when questioned in regard to the dead child, said: "The last time I saw him was in the evening when he went to bed. He was a very merry, good-tempered lad, and fond of romping. I was accustomed to play with him often—I had done so on that day. He was fond of me, and I was fond of him."

Did she commit the murder? What evidence was there of the fact beyond her own voluntary confession? It may safely be assumed that there was none. None was brought against her at the trial, and it is not to be supposed that in a country like England, where the law is rigidly enforced against peer and pauper alike, and in which the regard for human life is at its maximum, she would have been allowed to live quietly for five years undisturbed by those who had never lost sight of the murder. The great mass of the people who read about the affair said, "What more is required? She has confessed herself to be guilty, and therefore she must

be guilty." Let us see what warrant there is for such an assumption.

After two years passed at a boarding-school, during which it was a common subject of remark that she was very eccentric in her demeanor, Constance Kent entered St. Mary's College, Brighton, a sort of hybrid convent with a rector and a lady-superior. Here she was undoubtedly subjected to the action of influences calculated to exalt her cerebral sensibility, already abnormally heightened by hereditary predisposition and the action of the causes to which I have already alluded. Let us suppose, for the sake of the illustration, that she entered the *quasi* convent thoroughly conscious of her innocence. She knew that she was suspected. She had been arrested as the murderess, but discharged for want of evidence. During the two years or more subsequently, she had heard numerous disputes among her school-fellows in regard to her guilt. The nurse had been arrested, and, though also discharged, labored under the suspicion of being the criminal, and was in consequence unable to procure employment. Whisperings, too, which had reached her ears, had been going on against her father. It was said that he had had an intrigue with the nurse, and had killed the child—who had awoke while he was in the room—to save his own reputation. Crushed to the earth by these reports, he had buried himself in obscurity, a broken-hearted and a ruined man. Brooding over these thoughts and many others that must have forced themselves upon her, taught that self-mortification was one of the highest privileges of mankind, and thinking for years about the horrible events of that dreadful night, would it be a subject for astonishment if Constance Kent had come in time to think herself the murderess, and been brought to believe it her duty to relieve her friends from suspicion, and to save her own soul by taking the guilt upon herself? Had she not before her the example of her Lord and Saviour, who came down from heaven and assumed the sins of a wicked world in order that man might be saved? Do we not know, by our daily experience in observations of our fellow-men, that the mind, by constantly entertaining the most preposterous ideas, finally accepts them

as true? It is said, and doubtless with truth, that the most false and improbable story, if frequently told, is eventually so deeply impressed upon the mind of the relator, that he religiously believes in its genuineness.

A mere dream is, in certain states of the system, undistinguishable from realities. A patient, a lady with deranged menstrual function, informed me a few days since that she had risen in the night and gone to visit a gentleman of her acquaintance, who lived in a distant part of the city, and had stayed in his house all night. Thorough inquiry showed beyond the possibility of a doubt that there was not a word of truth in her story; that she had not left the house at all, and that the gentleman in question was not at the time in the city. Doubtless the whole series of events had no other foundation than a vivid dream. In the middle ages spontaneous orgasm made many a woman consider herself subjected to the influence of the devil. We know, too, that most children are incapable of discriminating between the phantoms of dreams and actual events, and they are frequently punished for lying when they firmly believe they have spoken the truth. I have often had children give the most circumstantial and serious accounts of their interviews with fairies and ogres, which accounts were clearly attributable to dreams.

A desire for notoriety will sometimes be the predominant force in causing a false confession. A few months ago I was requested by Colonel Whitely, the chief detective officer of the Government, to visit, in the Tombs prison, a man who had confessed himself to be a member of a gang of counterfeiters. This individual had written a letter to the Secretary of the Treasury, in which he detailed in the most consistent and minute manner the organization of the band, and as members of which he gave the names of the most eminent and respectable citizens of the United States, of both political parties. His statements were believed, and Colonel Whitely was directed to investigate the whole affair with the utmost secrecy and completeness. Colonel Whitely, with the perspicuity for which he is noted, soon had his suspicions excited that the man's story was a fabrication. Nevertheless, the

evidence the fellow had sent to Washington was so far credited that it was under consideration whether or not the alleged members of the band, embracing governors of States, senators, representatives, high officers of the army and others, should be arrested. At this juncture, Colonel Whitely requested me to examine the man. I found him perfectly coherent, but wavering and contradictory in his statements. Examination of the skull showed that he had received a wound from a musket-ball, and this, with the facts that he did not sleep, that he had cerebral congestion, and was evidently laboring under a delusion, convinced me that he was a fitter subject for the lunatic asylum on Blackwell's Island than for a prison, and I accordingly had him sent there. In this case a desire for notoriety and the self-inflation resulting from the association of his name with others of exalted station, had been the primary force of his action, and had eventually rendered him insane.

A mere confession—especially one made under such circumstances as that of Constance Kent—is not sufficient evidence of guilt. We know that men and women have often avowed a criminality which did not exist, and which they have persisted in claiming for themselves till they yielded up their lives on the gallows, or at the stake. Do we believe that Father Gaufridi was guilty of bewitching more than a thousand women, and of worshiping the devil, because he confessed these things, and was burned at the stake in expiation of his self-imposed crimes? Do we credit the acknowledgments of Sister Marie de Sains, of the Brigettine convent at Lisle, that she had committed hundreds of murders, strangled numberless children, ravaged graves, breakfasted with devils, and perpetrated thousands of unheard-of sacrileges and barbarities?

In those days a woman who confessed to being a witch was put to death without fail, and yet we read, in the book entitled the "Malleus Maleficarum; or, the Hammer of the Sorcerers," that a woman who was in the hands of the inquisitors assured them that she repaired really and bodily whither she would, and that, even were she shut up in prison and strictly guarded, and let the place be ever so far off.

The inquisitors ordered her to go to a certain place, to speak to certain persons, and bring back news of them. She promised to obey, and was directly locked up in a chamber, where she lay down extended, as if dead. They went into the room and moved her, but she remained motionless, and without the least sensation, so that when they put a lighted candle to her foot and burnt it she did not feel it. A little while after she came to herself, and gave an account of the commission they had given her, saying she had had a great deal of trouble to go that road. They asked her what was the matter with her foot. She said it hurt her very much since her return, and knew not whence it came.

Then the inquisitors declared to her what had happened—that she had not stirred from her place, and that the pain in her foot was caused by the application of a lighted candle during her pretended absence. The thing having been verified, she acknowledged her folly, asked pardon, and promised never to fall into it again.—(*Colunt.*)

The value of confession as an evidence of guilt is overestimated, and should, in my opinion, never be accepted, unless confirmed by collateral evidence. The practice of requiring an accused person to plead at all is in itself absurd, and contrary to sound psychological science. It is the business of the government to prove the offense irrespective of what the prisoner may say; and this was not done in the case of Constance Kent.

Moreover, due weight has not been given by the law to those inherent forces of our organization, those mysterious promptings of our nature, which so often cause us to take dangerous risks, and which, as we have seen, may urge to a false confession. When an idea of the kind has taken possession of the mind, it rules with overwhelming power.

In speaking of the absurdity of employing torture to get at the truth, Beccaria, in his remarkable "Essay on Crimes and Punishments," says: "Every act of the will is invariably in proportion to the force of the impression made on our senses, and the sensibility of every man is limited. The impression of pain, then, may increase to such a degree that, occupying

the mind entirely, it will compel the sufferer to use the shortest method of freeing himself from torment. His answer, therefore, will be an effect as necessary as that of fire, or boiling water, and he will accuse himself of crimes of which he is innocent, so that the very means employed to distinguish the innocent from the guilty will most effectually destroy all difference between them."

Can there be a doubt that what is true of bodily torture is equally applicable to the mental torture of an irresistible and ungratified desire, such as may have filled the mind of Constance Kent? Here I might close these very imperfect remarks, but I feel impelled to say an additional word in regard to the principal case upon which they are based. Into the question of the guilt or innocence of Constance Kent I have not entered; I have only contended that her criminality is not satisfactorily established by her confession. But, from the stand-point that she actually did commit the murder, a few points suggest themselves:

It must be recollected that Constance Kent at that time was of an age when women are peculiarly sensitive, and, as it were, instinctive in their feelings. Their likes and dislikes are conceived upon the most trivial and often most erroneous grounds; they are subject to very whimsical and really ungovernable fancies; their nervous systems are disordered, and thoughts may be conceived and acts committed which, at a subsequent period, would fill their minds with horror. Numerous instances of the kind have come under my observation, and physicians generally will doubtless recognize the truth of what I say. Though, in the great majority of young girls who are brought up under proper influences, these psychological evidences of the great change the organism is undergoing rarely make themselves manifest to any but those with whom they are thrown into the most intimate relation, this is, unfortunately for human nature, not always the case. A slight derangement in the physiological processes which are going on may produce simply an appetite for chalk or slate-pencils. A transient vertigo may cause a radical and permanent change of character. An almost unnoticed congestion of the brain

may prompt to the commission of a horrid crime. Even an adult man is never the same after as before an attack of cerebral congestion or hæmorrhage. From having been kind, considerate, and gentlemanly, he may become changed to a being of morose and brutal instincts, which it is impossible for him to restrain within bounds. With how much greater force would these or similar influences act upon the impressionable nervous organism of a young girl when at the most susceptible and critical stage of her existence! To hold her legally, morally, or physiologically, accountable for their effects, would be about as sensible and as logical as to blame her for having a club-foot or a distorted face. And if, in addition, we find her hereditarily predisposed to insanity, we should still less be disposed to believe in her criminality. Society might punish her for its own protection, but punishment in such a case would be a necessary evil.

At a period of her life, therefore, when Constance Kent required the most tender and considerate care, she was without the support and counsel which none but a mother can give. Under the influence of morbid ideas conceived by an unhealthy mind, she, according to her confession, perpetrated a deed the memory of which subsequently excited in her no other emotions than those of anguish and remorse. That a child of her low order of intellect should have murdered her brother so guardedly as to leave no traces to connect her with the act, should have undergone the most searching examination without the shadow of a suspicion being proved against her, and should for five years retain in her own bosom the great secret of her life, can only be explained upon the supposition that she acted from an insane and irresistible impulse, and that the cunning which enabled her to baffle the officers of the law was fully as abnormal in its character.

The feeling which prompts us to sympathize with this unfortunate girl may be called maudlin sentimentality and the offspring of false science; but every physiologist knows that it is based upon those mysterious but nevertheless well-recognized laws of life which, if, as is necessarily the case, of no force in a court of justice, organized for the protection of

society, are influential with those who are not altogether ignorant of the relations which exist between mind and matter, and will doubtless be taken into consideration by the infallible and merciful Power which created them.

Yet her punishment was not altogether untempered with mercy; for, in deference to the known feeling on the subject, it was first commuted to penal servitude for life, and subsequently to transportation for the same period.

SUGGESTIONS RELATIVE

TO THE

SEQUESTRATION OF THE PERSON

OF

ALLEGED LUNATICS.*

By R. L. PARSONS, M.D.*

Within the past few years, the methods of committing patients to asylums for the insane have attracted considerable attention, and have occasioned no little discussion in this country. The people, who are naturally jealous and sensitive on the subject of their personal liberty and rights, have been rendered, perhaps, unduly sensitive in regard to the confinement of sane persons in lunatic asylums, through the influence of certain sensational novels that have gained a wide circulation through the distorted representations of patients who have been discharged when yet uncured, and also from the fact that sane persons sometimes actually are confined as lunatics. Hence it is not surprising that men have attempted to secure the enactment of laws in several of the States, to the effect that no person shall be confined as a lunatic without a jury-trial. In one of the States such a law has been enacted.

On the other hand, medical superintendents of asylums are disposed to favor those methods that are least likely to prove

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causes of irritation and annoyance to the patient, and that offer as few obstructions as possible to early hospital care and treatment.

It is not surprising that the popular sentiment should be in favor of the greatest possible safeguards against the confinement of sane persons in asylums for the insane. The possibility of such an event is disagreeable in itself, for, if one person may be unjustly confined and branded as a lunatic, why may not another? Who, in fact, can feel assured of his personal liberty? But the loss of personal liberty may not be the most serious consequence involved; for the mistake may soon be discovered and liberty regained. In the mean time, however, the property of the alleged lunatic may be badly managed, squandered or appropriated by incompetent or dishonest relatives; or his children may make unfortunate alliances or associations; or they may so lose in respect for their parent as to be thereafter beyond his influence. While confined within the walls of an asylum, physical injuries may be received from some of the irresponsible persons with whom he is associated; or his mind may be unfavorably affected through chagrin, wounded pride, a sense of injustice, or through local associations and disturbing influences. If there be a predisposition to insanity, these causes may be sufficient to induce an attack of the disease. Conditions that are favorable to persons who are insane, may be unfavorable to those who are not. When the alleged lunatic has been discharged as *not insane*, his disabilities and annoyances are by no means at an end. It will be found that many persons still entertain feelings of distrust toward those upon whom a suspicion of insanity has rested, even though this suspicion has been declared unfounded by competent authority. On account of this distrust, his business prospects are likely to be less favorable and his social relations less pleasant than before. Dread of recommitment to an asylum may prove a still further and not unfounded source of annoyance, for it unfortunately happens that the simple fact of a previous commitment is often considered a strong argument in favor of the propriety of a recommitment.

Arguments like the above are urged in favor of what are supposed to be the strong safeguards of a jury-trial.

Alienists are, without exception, opposed to the method of trial by jury, for reasons like the following:

A jury of six, or any other number of unprofessional men, is utterly incompetent to decide regarding the sanity or insanity of a doubtful case; and it is only on account of those that are not evidently and unmistakably insane, that a jury-trial is proposed. Even with the aid of skilled specialists in insanity, the jurymen cannot be expected, within the period of a few days, to learn and thoroughly understand principles, and to appreciate the significance of manifestations, that have required the careful study of men equal to themselves in intelligence, for long periods of time and under the most favorable circumstances. The opportunities afforded in a court-room for the direct study of a doubtful case of lunacy are exceedingly unfavorable; for many persons who are really insane are able to conceal their delusions, and to conduct themselves in a becoming manner, while undergoing a public examination that they are aware is to decide the question regarding their sanity. Hence, if the jurymen make a rational decision, they must adopt the opinions of the medical experts; or, in other words, the medical experts virtually decide the case. If the experts disagree, it is hardly to be expected that the jury will elicit truth from the resulting uncertainty and confusion.

The probability that a jury-trial will be entirely barren of good results is not the chief objection, however, to this method of ascertaining the mental status of alleged lunatics, and of securing their admission to asylums for care and treatment. The chief objection is, that a jury-trial is likely to injure the patient.

The insane are often so debilitated by physical disease before the necessity of sending them to an asylum is fully realized, that dispatch and an avoidance of all disturbing influences are of the utmost importance. The delay of a single day may jeopardize the life of the patient. Starvation is often imminent through want of knowledge on the part of friends

of the real condition of the patient, or through lack of tack or skill in administering the necessary food. The mental excitement is often such that the patient needs to be kept in the greatest possible quietude and seclusion. The publicity of a court-room would tend greatly to increase such a state of excitability, and would perhaps destroy the chances of a cure.

Again, many sensitive patients would be as much annoyed by having the question of their sanity submitted to a jury for a decision as they would if they should be arraigned before a court of justice on a criminal charge. After recovery had taken place their objections to such a course of procedure would be in nowise diminished; for then they would fully realize that calamities and weaknesses, which should have been respected and concealed, have been unnecessarily and unjustifiably paraded before a curious and unsympathizing public.

The objections just mentioned would also be understood and appreciated by the relatives and friends of the insane; and hence, in order to avoid the publicity and the dangers inseparable from a jury-trial, the advantages of asylum-treatment would not be secured until the latest possible moment. The most favorable opportunity for efficient treatment would thus oftentimes be lost, for it is a well-established fact that a very large percentage of the patients who are admitted to asylums soon after the commencement of the disease are cured, while the prognosis in the case of those who are kept at home for a considerable period of time is decidedly unfavorable.

The three great objections, then, to the method of committing insane patients to asylums through the medium of a jury-trial are these: 1. That the method is inefficient. 2. That the patients are very liable to be injured directly by the delays and excitements inseparable from the process; and, 3. That they are liable to be injured indirectly by being kept at home, on account of the prejudice of their friends against a jury-trial.

Some medical superintendents of asylums for the insane are strongly of the opinion that there should be no greater difficulties in the way of placing an insane patient in a lunatic

asylum than of placing a case of fever in an ordinary hospital. They hold that, if it is proper to confine a delirious person to his room or bed without a legal process, it is quite as proper and sensible to confine a person whose mental incapacity is similar in character, but only a little more chronic in form, in an asylum without a legal process. The patient is sick; he needs treatment. He is incapacitated from judging of what is best for himself; his friends should be allowed to judge for him. Thus the proper steps would be taken at the proper time by those most interested in the welfare of the deranged person; while all publicity, excitements and annoyances of every kind would be avoided. Especial provision might easily be made to prevent the confinement of sane persons in asylums by a regular and systematic inspection of all such institutions by competent and legally-constituted authorities.

Here we have the extreme views of men who look at the same subject from different stand-points. The one party, having especial regard to the interests of those who are not insane, desire to so hedge about the entrance to our asylums as to render the admission of an improper subject an impossibility. The other party, looking rather to the best interests of the insane, desire to have all obstructions removed that will have a tendency to hinder their early and facile admission.

Neither of these views has gained the public confidence to any great extent. Both are open to very serious objections. Hence in this and in some of the other States a middle course has been adopted by which the most serious of these objections have been avoided. The law of the State of New York, as applied to New York City, provides substantially as follows: Two respectable physicians are first to examine the alleged lunatic. If satisfied that the person is insane, and needs asylum care and treatment, they make a joint affidavit to that effect before a judge (magistrate). Hereupon the magistrate (judge) commits the patient to an asylum in due legal form, retaining the affidavits of the physicians as his vouchers. A method similar to the above in all its essential particulars has

recently been recommended for general adoption by the Association of Superintendents of American Asylums for the Insane.

By this method all the advantages of the other two are gained, and all the disadvantages avoided. Due provision is made for securing dispatch, medical testimony and legal process, on the one hand; and for the avoidance of publicity, unnecessary delays and excitement on the other. Theoretically this would seem to be all that could be desired. Practically, however, there are some important defects which it is believed admit of an easy remedy.

Since the year 1847 no less than one hundred and twenty-five persons, who have been committed to the New York City Lunatic Asylum as insane, have been discharged as improper subjects. During a single year forty persons have been discharged from American asylums as having been *not insane* at the time of their admission. Many such cases are admitted every year.

It would appear, then, that there must still be some defects in the methods by which patients are placed in asylums, or else that there is a failure in complying with the legal requirements. If there be any such defects or failures, it is of the utmost importance that they be remedied. A thorough reconsideration of the whole subject, then, would seem to be demanded, as thus alone can all the conditions be understood, and more perfect methods adopted.

The first subject of inquiry should evidently be regarding the nature of the cases that are improperly committed to asylums for the insane. Among these may be enumerated those laboring under the delirium of fever under the immediate effects of alcoholic intoxication, cases of acute cerebral inflammation or congestion, of simple debility, of eccentricity, of imbecility, of the childishness and weakness of mind incident to old age, cases of feigned insanity, and, finally, those regarding which mistakes have been made through lack of a sufficient knowledge of mental manifestations in the sane and in the insane, through want of care and thoroughness in making the diagnosis, through too great reliance on the statements of

others, and through faulty methods of investigation. To these may be added certain cases of transient mania, which have made a perfect recovery at the date of their admission, although they may have presented undoubted indications of insanity when the diagnosis was made.

For the avoidance of many of these mistakes the exercise of care and of ordinary acumen and medical knowledge would suffice. If a case of typhus fever, of drunkenness, of narcotic poisoning, of acute cerebral inflammation, or of simple physical exhaustion, complicated it may be with a lack of knowledge of the English language, be diagnosed as a case of insanity, the mistake should be considered simply as a medical blunder; one of those blunders, however, that may prove more detrimental both to physician and patient than lack of ability would prove in a case involved in real difficulty. The plea that the patient was at the time of examination quite incapable of exercising his mental faculties would be considered insufficient, for the physical symptoms, if carefully observed, would have sufficed to indicate the true nature of the disease.

In regard to these cases, however, in which the manifestations of disease are principally mental, physicians, as they have hitherto been educated in their profession, are not without excuse if they sometimes make mistakes. They have not been taught the symptoms of mental disease, they have seen few cases of insanity, they have not learned those methods of investigation that are most likely to elicit the facts. Hence they are distrustful of their own knowledge and abilities, and are liable to content themselves with vague generalizations that are principally based on the statements of interested parties, on preconceived notions, and on the appearance of the patient. The appearance of the eye alone has been adduced as the pathognomonic symptom on which the diagnosis of insanity was based.

The circumstances may, for instance, be somewhat as follows: The family physician is requested to unite with some other physician, whom he shall choose, to procure the commitment of a supposed lunatic to an asylum. The physician is positively assured that the person in question is very crazy

and very troublesome; that his natural disposition has entirely changed, so that he is now ill-natured and exacting, whereas he was formerly amiable and obliging; that, without any sufficient cause he exhibits outbursts of passion, during which he loses all self-control, and is considered dangerous; that he entertains unfounded antipathies against his best friends; and that his memory is notably impaired. The physician calls on his patient, and is coldly received. He may find him irritable or even much excited. After in some degree enlisting his patient's confidence, he is entertained with a story of wrongs, neglects, and insults. He sees clearly that his patient is not his former self. The change in disposition he interprets as an evidence of an impairment of the affective faculties; the story of wrongs and insults as evidences of insane delusion. He informs his colleague of the facts he has elicited, and of the opinion he has formed. The associate physician has little personal interest in the case; he is quite satisfied that the family physician is correct in his views; and he is willing to abide by his conclusions. He looks in and sees the patient, however, because the law so requires. The necessary affidavits are then made.

But the coldness and irritability exhibited in the physician's presence may have been induced by dishonest friends; the statement regarding wrongs and insults may have been truthful. The case may have been simply one in which the mental faculties had become somewhat impaired, through advancing years and physical infirmities.

The following histories will serve to illustrate certain classes of cases that have been improperly placed in the New York City Lunatic Asylum as insane:

Case I.—G. M., a married gentleman, about thirty years of age, manifested no symptoms of mental aberration on his admission, nor yet during his residence at the asylum. He conducted well, was rational in conversation, and came to the asylum of his own free will, although in accordance with the advice of his friends. The history of his case, as given by himself and his friends, was as follows: About six months previous to the date of his admission, he had been induced to

try his fortune at the faro-table. For a few evenings he was tolerably successful, when he became more confident, and risked a considerable amount of money, which he lost. He tried his fortune again and again, but almost invariably lost all the money he brought to the table. He now made some inquiries, and learned that he had been playing against an unfair game. Much annoyed at the idea of having been swindled in this manner, he resolved to study the theory and the tricks of the game, recover the money he had lost, and then stop gambling. He soon became so fascinated with the excitements of the faro-table, and so strongly impelled by the desire for revenge, that he found himself practically unable to pass by a gambling-saloon without again trying his fortune. In fact, he had acquired the *habit* of gambling; but his mental condition was in no way different from that of multitudes of amateur gamblers who squander their means, beggar their families, and even then sometimes continue their vicious practice by acting as aids and decoys in the service of the professional gamblers who have robbed them of their money. These men are the slaves of a habit that has ruined their morals and weakened their self-control; but this does not constitute the disease we call insanity. In accordance with these views, Mr. M. was discharged as an improper subject, since neither our own observations nor the statements of his friends furnished any evidence of insanity other than that he had a strong inclination to gamble at faro whenever the opportunity offered.

Case II.—W. S. came to the asylum in handcuffs. He was not communicative, but was quiet in demeanor and connected in his answers. He said that he had been staying in the city for the month previous, and that, during that period, he had spent his time in playing cards and drinking. He strongly averred that he was not then, and never had been, insane, although he had had many misfortunes. His manner, conversation, and appearance were quite in accordance with his claim. No delusions or other manifestations of insanity were discovered at the time of his admission, nor yet during a residence of more than two months at the asylum. Before he was discharged

he told us that he had been robbed of his watch and of a considerable sum of money just before he was sent to the asylum; that he had been drinking pretty hard, and that his landlord had induced him to give him his watch for safe-keeping; that he (the landlord) had taken seven or eight hundred dollars from between the mattresses of his (patient's) bed, where it had been placed for concealment, saying that his money would be stolen if kept there, and that he would take care of it for him; but that, when subsequently he asked his landlord for his watch and money, the landlord denied having any knowledge of them, and secured his (patient's) arrest; that he was indignant on account of this injustice, and, being somewhat under the influence of liquor, resisted the arrest, when he was handcuffed and soon after sent to the asylum as insane. After his discharge he sued his landlord for the watch and money of which he claimed that he had been deprived. The testimony of Mr. S. was clear, connected, and circumstantial, and was so far corroborated by other evidence that the jury were satisfied he had been robbed. They returned a verdict for the plaintiff. There can hardly be a doubt that, at the time of his arrest, and of his examination by the physicians, he was in a very excited state of mind. He was under the influence of liquor, and believed that he had been robbed and sent to prison by those who had robbed him. He undoubtedly appeared somewhat like a maniac at that particular time, although a little delay and a little more care would probably have sufficed to demonstrate his true condition. Not only was our diagnosis that he was not insane when received at the asylum corroborated, but the history of the case subsequently obtained, failed to show that he had suffered from alcoholic mania, or from delirium tremens even, at any time.

Case III.—J. D., a man about thirty-two years of age, had well-marked symptoms of typhoid fever when admitted to the asylum as insane. He was much prostrated, both mentally and physically. He was received late in the evening. On the next morning he was transferred to the fever hospital, where he died on the fourth day after.

S. S., a German, about twenty-five years of age, was re-

ceived at the asylum, unaccompanied by friends or by any history of his previous condition, or of the causes that led to his arrest. At first he was taciturn, and appeared to be either melancholic or demented. Whenever he attempted to speak it was noticed that his articulation was very defective, like that of an imbecile, and also that he appeared to be dull of apprehension. It was found, however, that our patient was quite deaf. He could understand spoken words only when they were articulated with great distinctness, and near his ear. When carefully questioned, so that he could understand, he gave a connected and apparently reliable account of himself, which was as follows: He said that he was a tailor by trade, had no relatives in this country, spoke the German language only, and that imperfectly on account of his defective hearing, which was of long standing, and that he was arrested without any reason whatever that he knew of, while he was quietly walking in the street. He had been accosted by a policeman, but did not understand what he said or what he wanted. He was immediately arrested, sent from place to place, and finally to the asylum. His apparent dementia then seemed without doubt to be owing to his imperfect hearing and enunciation, and his apparent melancholia to the chagrin and apprehension caused by his arrest and detention. He was kept under observation for several weeks, during which time he conducted and worked well, and manifested no symptoms of mental aberration. An acquaintance finally called, who fully corroborated the patient's account of himself. He said that he had known Mr. S., who boarded in his immediate neighborhood, for a considerable period of time; that he was always quiet and industrious, and that he appeared to be then, in all respects, in his normal state of mind. None of his neighbors had ever thought of Mr. S. as insane.

Case IV.—C. H. was first admitted to the asylum as a patient in June, 1867. He was very incoherent, and was excitable in manner, although he was generally good-natured and inoffensive. He gradually improved, so that in October he was allowed to leave the asylum on trial in the care of one of his friends. Three days afterwards he was brought back in a

state of great excitement. He had evidently been indulging in intoxicating drinks. This he afterwards confessed, but excused himself by saying that his friend had got him drunk in order to get his money. He again improved to a certain extent, but remained somewhat excitable and incoherent until two or three months previous to his discharge. At about this time he received a severe blow on the abdomen from a patient, the effects of which confined him to his bed for several weeks. He then rapidly improved in mental condition, and was discharged as recovered in February, 1870. Oftentimes, when at the asylum, he asserted that he had several hundred dollars laid by in a savings bank. On one occasion while he was at the asylum, and still incoherent, an order on the bank for the money was brought for him to sign. The order was an old one that he had already signed; but the signature was indistinct, and an apparently respectable gentleman who brought the paper asserted that the signature desired was a mere matter of form, as the other signature had been properly made when the patient was in his right mind; that he simply wished to have the signature made legible in order to save the trouble of proving the fact, and of identifying the original signature. As this story was credited, the affair was not thought of sufficient importance to bring to the notice of the resident physician, and the patient was allowed to re-sign the order. Soon after his discharge, Mr. H. returned, and said that he had been robbed of all of his money. He asserted that he had no recollection of ever having signed an order for the money at all; and also that he did not owe the money to the man who drew it from the bank. One month after his discharge, Mr. H. was again committed to the asylum as insane. No symptoms of insanity, however, were observed at the time of his admission. After keeping him under observation for two weeks, he was discharged as an improper subject. He asserted that he had demanded the restitution of his money, but that, instead of receiving it, he had been arrested and recommitted to the asylum. He subsequently called at the asylum on several occasions, at considerable intervals of time, and appeared always to be of sound mind. He asserted that he did not

taste of intoxicating liquor during the interval between his discharge and his recommitment; and there is no evidence that he had done so.

Case V.—D. P., a German woman, thirty years of age, was brought to the asylum without attendance or any statement of the history of her case. She conducted herself properly, and gave a coherent account of her domestic relations, which, according to her story, were not altogether harmonious. In fact, she asserted that her husband had abused her on account of some other woman of whom he was enamored. Subsequently her husband called and stated that his wife had entertained the idea that a child they had lost some years before had been disinterred and cut in pieces; that she thought he spent his money with bad women; that she thought the people wherever she was, would injure or kill her; and that she was inclined to quarrel with her husband, although she had never been violent toward him. These assertions of the husband, with the exception of the one regarding her belief in his inconstancy, were not corroborated by a further examination of the patient, who, during the three weeks of her residence at the asylum, conversed and conducted herself in a rational and exemplary manner.

Case VI.—A. C., a Swiss woman, about forty years of age, was arrested in the street by a policeman, and was sent to the asylum as insane. Her history was as follows: She had formerly been in affluent circumstances, but had become impoverished. She came to the city, hired a small room, and supported herself and her two children by needlework, with the aid of a small income from a piece of property that still remained in her possession. Two weeks previous to her arrest, she had been turned out of her rooms because she could not pay her rent. She was almost a stranger in this city, did not know whither to go or what to do, and wandered about the streets with her two children until she became almost exhausted. When received at the asylum, she was filthy and ragged. On account of her exhausted condition, and her imperfect knowledge of the English language, she may have appeared to be incoherent to the examining physicians. She

manifested no real incoherence, however, delusion, nor other evidence of insanity, after her admission to the asylum.

Case VII.—A. G. appeared to be perfectly rational when admitted—was said to have been "very wild" when at the city prison. This he explained by saying that he was indignant at his unjust detention, and could not speak the English language well enough to make himself understood, so that he might have appeared, and might have been, excited. He stated that he had been in seven prisons within a few days. This seemed to be an extraordinary statement; but, on a little further inquiry, it appeared that he referred to the different police-stations and court-houses in which he had been held in durance after his arrest. He gave a very connected account of his whereabouts after his arrest, and in enumerating the places he saw fit to designate as prisons they really amounted to the number stated. He also said that the Jews were inimical to him, and persecuted him. Without further inquiry, it might be inferred that he entertained unfounded suspicions against the Jews that would rank as insane delusions. What he really meant, however, was that certain Jews in his immediate neighborhood, who were engaged in the same business with himself, thought that he conducted his business affairs in such a way as to damage their own; that they had quarrelled with him, and threatened him on that account; and, as he believed, had caused his arrest. Now, even if he were quite mistaken in the supposition that these Jews caused him to be arrested, this mistake could not, under the circumstances, be considered as a proof of insanity. Mr. G. was under observation three weeks, and during that time exhibited no evidences of mental aberration either in language or in manner; nor, after an interval of eighteen months, has it been found necessary to recommit him to the asylum.

Case VIII.—Miss S. J. talked rationally and intelligently, and manifested no symptom of mental aberration at the date of her admission. She stated that at times she did not sleep well at night, but that she never suffered from deprivation of sleep, as she made up by day what she lost at night. She was about thirty years of age. For the ten years previous her

health had been poor. She had suffered much from internal hæmorrhoids and from uterine disease, for which she had been a long time under treatment, but had experienced only very temporary relief. Her catamenia were sometimes absent, and at other times diminished. She had an almost constant leucorrhœal discharge, and suffered from a *fistula in ano*. The above points she herself stated at the time of her admission.

At a subsequent period a relative gave the following history of her case, as understood by her friends. It will be noticed that this account, in so far as it relates to her physical condition, corresponds very closely with that given by the patient herself: Miss J. has suffered from uterine disease since her first catamenial period, at which time the menstrual flow was checked by exposure to cold. She usually suffers from dysmenorrhœa, which is severe. Sometimes the catamenia are absent for several months in succession. She has leucorrhœa the greater portion of the time, and also suffers from internal hæmorrhoids, which sometimes bleed. On account of these maladies, she has been under the almost constant care of her physician for many years past. About two years ago it was first noticed that there was a marked change in her feelings and conduct toward men. She began to intrude herself into their society, would frequent rooms and places where she was most likely to meet them, and would station herself by staircases where they were most likely to pass. They occupied all her thoughts, and were a constant theme of conversation. If some slight attentions were shown her, they were interpreted as serious in their character, and she would inform her friends that she was engaged to be married on a certain day not far in the future. Before the appointed time had arrived, however, she would either seem to forget her supposed engagement, or she would say that the time for the ceremony was changed to a more distant day; or some new engagement would take the place of the old one. These supposed engagements were very numerous, amounting to fifteen or twenty within the period of two years. In some of these cases she had received only the most ordinary attentions from persons who are positively known to have given her no encouragement

whatever. One of them, she was well aware, was at the time under an engagement of marriage to another woman. She has had unreasonable antipathies against her relatives, including small children against whom she could have had no cause of ill-feeling. She also entertained groundless antipathies against some of her former associates, making slanderous assertions against their character. Her notions of her own importance and abilities have of late become much exaggerated. Within the past two months she has associated and lived with young women who are known to be of bad repute. Patient's father had been of intemperate habits for some years previous to her birth. A half-brother has suffered several attacks of mania. The statements of the friends are given *in extenso*, as they embrace all the supposed manifestations of insanity that were adduced.

It will be observed that in regard to her physical condition her own statement and that of her friends were quite at accord. Miss J. asserted that in some respects her relatives quite misunderstood her, and that in others their statements were exaggerated, and their account of her actions not in strict accordance with fact. A friend who was well acquainted with her called at the asylum, and stated that, although he had seen her from time to time, he had observed none of the extravagant actions mentioned by her relatives, but that, on the contrary, he had never discovered any great change in her manner, characteristics or subjects of conversation. Miss J. further stated that her half-sister, with whom she had lived, had treated her kindly until the past two or three years, within which time certain differences had arisen between them on account of property, and on account of the too strict supervision which she thought her sister exercised over her. It would appear that her relatives had never considered her as insane until they were told by her attending physician, six months before her admission, that she was and had been for a considerable period of time insane, and that the form of her insanity was nymphomania.

Miss J. was kept under observation for the period of three months, and during that time manifested none of the symp-

toms of nymphomania, or of any other form of insanity. The conclusion arrived at regarding her case was as follows, viz.: That long-continued and often-repeated local treatment for uterine disease had served somewhat to diminish her natural maidenly timidity and reserve; that, after passing the age of thirty years, and finding herself still unmarried, and under a guardianship that she did not always find agreeable, she had become particularly anxious lest she should always remain a spinster, and had resolved to throw herself upon the matrimonial market, with less regard for appearances than was quite in accordance with the more conservative views of her elder sister; that there was a real change in her manners and habits, but that she herself fully appreciated what the change was, and always retained her normal power of self-control; that, in consequence of this change in her manners and habits, misunderstandings, altercations, and ill-feeling had arisen between her and her relatives; and that, as a consequence of this ill-feeling, prejudiced and untruthful interpretations were placed on her actions and motives. There seemed to be no good reason for supposing that her friends were actuated by any but the most praiseworthy motives when they finally decided upon sending her to an asylum for the insane, but there did seem good reason for believing that they had been greatly mistaken regarding her mental condition. After her discharge she visited the asylum from time to time, but was not observed to manifest any symptoms of mental aberration. One of her old friends, with whose family she lived for some time after her discharge, and who has often seen her since, states that he has never at any time had any reason to believe that she was insane.

Case IX.—Miss Montez, when admitted to the New York City Lunatic Asylum as a patient, was about twenty years of age. She was in good physical health, and was above rather than below the average standard of intellectual capacity. Her command of language was good, and she had evidently received fair educational advantages, and been accustomed to the society of people of considerable culture.

She claimed that she was a daughter of the late Lola Mon-

tez and the late King of Bavaria, a princess by birth, and a physician by education. She styled herself the Princess Editha Loleta Montez.

Her own statement of the history of her past life was something extraordinary. She claimed that she was born in Florence, Italy, in 1849, where she lived till she was two years of age, when her mother brought her to America; that she remained in America about one year and a half, when she returned to Florence, and remained there until she reached the age of seven years; that she then went to live with her maternal grandmother in Ireland, and remained under her care until she was fifteen years of age, attending school in the meantime, and traveling in England, Ireland, and Wales; that she then traveled on the Continent two years, in care of an instructor, after which she returned to Ireland, and stayed with her grandmother until she was nineteen years of age, studying medicine a portion of the time; that she then made another short tour on the Continent, visited Bavaria, started for America in company with the Baroness von Herclotz, and arrived in New York eight months previous to the date of her admission to the asylum; that, on arriving in New York, she immediately went to Baltimore, where she stayed two weeks as the guest of Mr. Patterson, returning to New York at the end of this time, where she took rooms at the Astor House, became acquainted with Claflin, Woodhull & Co., delivered a lecture at Steinway Hall, and, to pass over many other adventures, entered a homœopathic hospital as a patient, whence, after suffering various indignities, such as insulting language and the confinement of her person, she was sent to the asylum.

She also stated, in relation to her pecuniary affairs, as follows, viz.: that, on arriving in the city of New York, she had in her immediate possession about $500; that, subsequently to her arrival, $34,000 in cash was sent to her from Europe, and placed in the care of Claflin, Woodhull & Co., bankers; that, after she had drawn $8,000 of this money from the bank, the firm refused to honor her checks; that she commenced an action to recover the balance, giving the law-firm of Howe

& Hummel $3,300 as a retaining fee, for which amount she had their receipt; that Messrs. Howe & Hummel swindled her out of the retaining fee, and refused or neglected to push her cause further than the initiatory proceedings in court; that Claflin & Woodhull still had possession of jewelry of considerable value which she had deposited with them, but which they refused to surrender; that she had sent a brooch worth about $3,000, and a diamond valued at $17,000, to Munich, in the care of the Baroness von Herclotz, on her return to Europe; that she had expended nearly the whole of the $8,500 she had had in her immediate possession since arriving in this country; and that, as her remaining funds and her jewelry were now unjustly withheld from her, she had found it necessary to go to the homœopathic hospital aforesaid for care and treatment on account of a temporary indisposition.

The above is a mere abstract of her account of herself, as elicited at the time of her admission. She conversed freely and fluently; appeared to have a very fair knowledge of persons, places, and dates, when not too closely questioned in regard to particulars; told a plausible and tolerably well-connected story; and was affable and courteous in her manner, although she evidently made an attempt to support her *rôle* as princess by her bearing, her language, and her demands. While telling her story she had the appearance of one who is taking especial care to guard against self-contradiction, and her demeanor was such as to excite a suspicion that she was merely playing a part. Certain discrepancies and contradictions in her statements were noticed, that served still more to strengthen this suspicion. The existence of insanity in her case was, in fact, considered to be highly problematical. Hence she was immediately placed under close observation, in order that it might be determined at an early day whether she was really insane or not.

During the first two weeks of her residence at the asylum no new developments were made. She was lady-like in her deportment, and connected and rational in her conversation, unless her statements regarding her past history should prove to be insane delusions. At the end of this time, however, it

was reported that she had a sort of fit, or syncope, while attending church at the almshouse, about a quarter of a mile distant from the asylum. It was said that she was unconscious for several minutes; that there was atonic spasm of one arm; and that a frothy saliva, tinged with blood, flowed from her mouth. At about nine o'clock the next evening she had a similar fit. The physicians of the asylum were in immediate attendance, and found the patient lying in bed, in apparently an unconscious condition; with her eyes open, fixed and staring; and with a small stream of saliva, tinged with blood, flowing from her mouth. There was no convulsion and no stertor. Her face was rather dusky in appearance, and her extremities were cold. Her arm when raised fell to her side as though she were profoundly under the influence of anæsthetics. When the conjunctivæ were irritated, reflex action was manifested, although apparently under some degree of voluntary resistance. In a moment, however, she became fully conscious, appearing as though she had just recovered from a deep sleep, or from the influence of anæsthetics. Her catamenia had appeared four days previously, but were in every way normal, while her general health had continued unimpaired. On the next evening, while attending the dancing *soirée*, another fit occurred, resembling the preceding. She did not fall to the floor, but leaned against the next patient to her, in a posture that seemed to be studied. She was under the observation of the physicians from the first of the attack. The earliest symptoms noticed were a duskiness of the countenance, and almost an entire suspension of the respiratory movements, although there was no convulsion, and no stertor or other indication of labored or obstructed respiration. No effort was made to restore consciousness. She was simply watched; the dancing going on in the meantime, as though nothing had happened. After about ten minutes she appeared partially to recover, and was led to the door. She then had another attack, and was carried to her room. She was given to understand that severe remedies would be applied in case of a recurrence of her fits. No more occurred during her residence at the asylum. As may be inferred, it was

judged that her fits were feigned, or at least voluntarily induced. When questioned regarding her fits, she stated that these were the first that had ever occurred.

Testimony was now sought in regard to her history previous to her admission to the asylum. It was soon ascertained that she had been in New York City for at least several months longer than the period she stated; that she had had fits, similar to those above mentioned, at the house of a clergyman, at the Astor House, at the office of Claflin & Woodhull, and at the Homœopathic Hospital; that she had represented herself as an escaped superior of a convent of nuns; that while a guest at the Belvidere House she took to her bed at the expiration of the week for which her board had been guaranteed, claiming that she was sick; also that she was an escaped nun, and was pursued, and that she had seen a priest in her room, lying in wait for her; also that, while at the Belvidere House, she arose from her bed and left the house in her night-clothes, saying, after she was arrested, that she was trying to escape from the priests who were pursuing her. Certain bills incurred at the Belvidere House would seem to indicate that brandy and wine may have had some influence on her mental condition at that time. One or two physicians who saw her at the Belvidere House thought she was insane. Other physicians who saw her during an apparent attack of illness, and also when in her *fits*, thought she was merely shamming. It was reported that, while at the Homœopathic Hospital, Miss Montez conducted herself in a very violent and outrageous manner; that she required to be placed under physical restraint to prevent her from destroying hospital property, and that she actually did destroy furniture and other property of considerable value. A witness, who was an *interne* of the hospital at the time, and who had abundant opportunities of observing whatever transpired, stated that she was insulted and abused, and that she merely did what any high-spirited woman might have done in a passion of anger under similar circumstances. The statements of the hospital *interne* and of Miss Montez, regarding her experience and conduct while there, agreed in all essential particulars. From these statements it

would appear that, in supporting her character as princess, Miss Montez had been imperious and exacting in her demands, that her pretensions had been ignored and ridiculed, and that a quarrel and a scene had ensued as natural consequences.

From the observations made, and the evidence thus far obtained, the decision could not have been otherwise than that Miss Montez was *not insane.* She evidently was neither melancholic nor demented. Nor yet was her case one of general mania; for the only symptoms of mania that could be adduced were her exaggerated notions regarding her wealth and her past sphere in life, supposing these notions to have really been insane delusions. From what has already been said regarding her deportment at the Homœopathic Hospital, it is evident that her conduct there was not characteristic of general mania. Her conduct was sufficiently accounted for by the circumstances of the quarrel. Similar quarrels, and very improper and even violent conduct are often observed in persons who are not insane. Her violence and excitability were manifested only in connection with this quarrel. At no other time, either while at the hospital, before her admission, or after her discharge, did she manifest similar symptoms. Even if the conduct referred to should be considered as arising from the existence of an insane delusion regarding her parentage, this would afford no sufficient evidence of the existence of general mania. Nor yet could this conduct be considered as an evidence of the existence of a state of *hysterical mania;* for there was too much method, too high a degree of self-control, too much persistent willfulness, to accord with this idea. Still less were the symptoms manifested there of *epileptic mania,* supposing her fits to have been epileptic in character, which, in fact, was not true. If she was insane at all, the case was clearly what is usually termed *partial mania,* or *partial ideational insanity.* But in partial mania the delusions are fixed and uniform in their character, and they are recognized and acknowledged by the patient as having been first entertained subsequently to a well-remembered date or event, however strong the belief may be in the actual existence of the supposed facts before such date or event. The hypothetical

delusions of Miss Montez were neither fixed nor uniform in their character. At the date of her admission to the asylum she stated her belief to be that she was a princess and a physician; and her account of herself covered the whole period of her past life, leaving no space in time for, and making no mention of, her *rôle* as nun. A few months before admission to the asylum she had claimed that she was an escaped superior of a convent, and was pursued by priests. At that time she conducted herself in such a manner as to lead a respectable physician strongly to suspect that she must be insane, and the evidences were quite as strong that she was insane at the one date as at the other. There was not only a change in the supposed delusions, but a wide difference in their character. In the character of princess she was hopeful and exacting; in the character of a pursued nun she was fearful and depressed. Again: at the time of her admission to the asylum she stated that since early childhood she had always known herself to be a princess; that there was no well-remembered date or event previous to which she was not aware of her royal descent.

Her general appearance, bearing, and manner were at times perhaps, such as at first to justify a suspicion that she might be insane; but, after a longer acquaintance with the case, almost every one who saw her became convinced that she was merely playing a part. Well-educated physicians certainly need not have been deceived.

To make assurance doubly sure, however, further inquiries were made, and a gentleman was found who had been well acquainted with the patient's father, and who had a few years before been tolerably well acquainted with the patient herself. From this gentleman, and from various other sources, all the leading facts connected with her past history were ascertained. It is sufficient to say (in this regard) that all her extravagant pretensions were entirely without foundation, and that she had practised various deceptions at other times and places.

Miss Montez was finally informed that a decision had been made regarding her case, namely, that on the one hand she was judged to be of sound mind, but that on the other her account

of herself was regarded as essentially untrue; or in other words, that she was believed to be an impostor. Certain facts were mentioned, to show that the latter opinion was not without proof, whereupon she was induced to state the leading points in the history of her past life; and her statements were found to agree in all essential particulars with the accounts already gained from other and diverse sources. The only points of especial interest in this connection were her statements regarding the fits and her assumed character as princess. The fits, she said, were induced voluntarily, although she soon passed into an abnormal state that was for the most part, if not entirely, beyond her control. The blood was from her mouth. The *rôle* and title of princess, she said, were invented by the parties who engaged her to lecture at Steinway Hall, for the purpose of attracting public attention; and that she had subsequently enacted the character then assumed on her own account.

Case X.—C. J. was fifty-six years of age when admitted to the asylum. He was accompanied by his family physician, and had been told that he was required at the asylum as a witness to the execution of certain papers, for which service he would receive the sum of ten dollars.

The statement of his case, as given by the family physician, was as follows: "Patient has always had a violent temper, and has often been violent in his language, but never until within two years past has he shown any decided symptoms of insanity. For many months past has thought that his wife kept a house of assignation; has sometimes exposed himself improperly at the door of his house; is taciturn and suspicious, and at times noisy, and threatens violence to his family and friends. Is not known to have any suicidal tendencies. General health has been good. No exciting cause known, unless it be a wound received on the head more than fifteen years since. No hereditary tendency known. First attack. Duration of the attack about two years."

On a personal examination, patient conversed connectedly and intelligently. He denied the truth of some of the statements of his physician, and others he explained in a way that

was at least plausible, and not at all improbable in the nature of things. For instance, he denied that he had ever improperly exposed his person at the door of his house, but admitted that very early in the morning or very late in the evening he might have gone to the door in his dressing-gown, drawers and slippers. After his admission, and during his residence at the asylum, he was kept under close observation, and was found always to conduct himself in a quiet, gentlemanly manner; and to converse rationally, unless, peradventure, some of his statements were based on insane delusions. Of this, however, there was no evidence.

A few days after the admission of C. J., a protest against his confinement as a lunatic, signed by five respectable citizens, was sent to the Board of Commissioners of Charities and Correction. They ordered an immediate investigation and report regarding his mental condition. Since he had been under observation, too short a period of time to render an opinion justifiable without other evidence regarding his past life and history, the testimony of thirteen persons who had been most intimate with him was carefully taken under oath.

Several of these witnesses were strongly of the opinion that C. J. was insane, while others, with opportunities for observation at least equally good, were of the opinion that he had always been of sound mind.

The evidence adduced was in brief as follows:

Since the date of his marriage, more than twenty years ago, Mr. J. had been irritable in temper and oftentimes abusive in language toward the members of his family. Fifteen years ago, after he had been married six or seven years, he directed his wife to write a very abusive letter to his father in Germany, calling him a robber, a thief, and other opprobrious epithets. He had been inimical to his father since his boyhood, and chiefly because his father had apprenticed him to a tailor, when he himself wished to follow some other pursuit. His wife stated that he had always been too nervous to write, when irritated, or about any subject that annoyed him; and hence that he had compelled her to write the letter in question. About eight years ago he had dragged his eldest daughter,

then twelve years of age, from the street to his store by the hair of her head, because, in opposition to the views of her mother, he wished her to leave school and assist in the store. About six years ago he took his son, ten or twelve years of age, in his arms, and, as his wife and daughter believe, was about to place him on a range heated to redness, when they interfered and prevented the deed.

During the past eleven years he had been seen on very many occasions by several witnesses, other than members of his own family, when greatly excited in manner and abusive in language. Almost every day he would scold in such a loud, angry tone of voice as not only to disturb the inmates of his own house, but also people who lived in the neighboring houses. On several occasions he had used violence against his wife, so that she carried the marks upon her person for several days. During the past two years his irritability and violence in language and manner had much increased. He would often call his wife and daughter prostitutes, and the house a house of prostitution. Has been heard to say of them, "I will kill you, I will kill you all together." At times would look about the house at night, as he said, to see if there were any men concealed on the premises. On several occasions arose for this purpose after he had retired for the night, saying that he would see if any of these good-for-nothings were about the house. Sometimes he was good-natured and agreeable, and he would then deny the fact of having been excited, abusive or violent on a previous occasion. One of the physicians who joined in procuring the commitment thought intemperance was the cause of his improper sayings and doings, but other witnesses testified that he drank only in moderation. The fact was pretty well established that he was more irritable in the morning than at any other time of the day, and this would seem to indicate that the use of intoxicating drinks had at least exerted an unfavorable influence on his disposition. The above points are the principal ones urged to prove that Mr. J. was of unsound mind.

Witnesses who had seen Mr. J. almost daily during the preceding three or four years testified that they had never

seen him excited or angry, save when speaking of the unkindness and abuse of the members of his own family towards him. The subjoined affidavit will serve to express the facts noticed, the inferences made, and the opinions entertained by this class of witnesses.

C. B., being duly sworn, says that he is a "practising physician, and has practised as such in the city of New York for thirty years last past; that for upward of two years last past he has been acquainted with Mr. C. J., now confined as an alleged lunatic in the asylum on Blackwell's Island, and has been in almost daily intercourse with him during the whole of that period, and has observed his conduct, manner, and deportment, and found him always cool and collected in his ideas, correct in his opinions and judgment, of even mental temperament, and of sober and steady habits. He never manifested any symptoms of monomania, insanity, or unsound mind. Deponent further says that he was informed and believes that the domestic relations of the said C. J. were unhappy, in consequence of constant efforts by his wife and family to coerce him into arrangements that he believed would operate injuriously to the peace of his family, and it was in consequence of his refusal that every effort has since been made by the family to make his residence at home unbearable, and to compel him to leave his own house; and if he has occasionally given vent to bursts of anger, it was, in deponent's opinion, only in consequence of the cruel treatment to which he had been subjected by his family, and evidence of his just indignation by reason thereof. That, after a full and careful examination of all the alleged symptoms of insanity charged against the said C. J., deponent is of the opinion that he, the said C. J., is not of unsound mind in any respect, or in any degree, but is as sane as the majority of all people out of lunatic asylums."

The above was duly signed, and acknowledged before a notary public.

The following facts were also elicited in the course of the investigation: Several years ago, Mr. J., together with his wife, had opened, and for some time carried on, a store of fancy

goods, Mr. J. having in charge the money, the buying, and the keeping of the accounts, and his wife assisting as saleswoman. Fine laundry work was also introduced as a part of the business, and of this department Mrs. J. took sole charge. This latter branch gradually increased in importance, until finally the fancy-goods business was entirely discontinued. The whole affair, including receipts, payments, and management, thus very naturally fell into the hands of Mrs. J.; her husband in the meantime doing a small business on his own account in pinking, etc., in another part of the building. This state of things was a cause of much domestic trouble and altercation; the wife claiming that she should have sole charge of the management of the business, and of the income, and Mr. J. claiming that he also should have a voice in the management, and in the disposition of the receipts, for the reason that he was the head of the house—had virtually commenced the business, and had invested several thousand dollars in the concern. Without entering into the merits or demerits of either side of the question, it was evident that this state of affairs had been the source of much domestic strife and ill-feeling, and was a sufficient cause for much of the excitability and abusive language on the part of Mr. J. that had been observed. In fact, there was no doubt that his natural irritability of disposition had been increased by this domestic feud, and the more especially since the whole family was so arrayed against him that he was left in a hopeless and insignificant minority.

Another fact was sufficient to account for the extraordinary irritability, strife, and exhibitions of anger, that had been observed during the last two years. A young man, whom Mr. J. did not approve, was paying his addresses to Miss J., the eldest daughter, notwithstanding the opposition of her father. The young man's suit was approved and encouraged by all the other members of the family. A family quarrel was the result. Mr. J. did not wish the suitor to visit his house at all, but claimed that, on the contrary, he came and stayed at unseasonable hours, and also that, since he had been paying his addresses, his daughter had on more than one occasion been

away from home at an unseasonable hour of the night, and without a proper escort. He acknowledged that he had expressed his disapprobation of this conduct in strong terms, saying that his wife and daughter were acting like prostitutes, and using other expressions of a similar kind; but he denied having said that they really were prostitutes. He also acknowledged having searched the house as above-mentioned, but said he had reason to suspect that his daughter's suitor was making unseasonable and clandestine visits at the time, and that his object was to find him, and eject him from the house.

Mr. J. claimed, on his part, that he had been treated by his wife and daughter with neglect, contumely, and positive abuse; that his wife had fastened the house against him; had thrown his clothing into the street from the window; and had thrown scissors, dishes, and sticks of wood at him with such violence as to put him in fear for his personal safety.

On the occasion of the first interview with Mrs. J., she was asked by the resident physician if she had ever at any time thrown dishes, sticks of wood, or other missiles, at or toward her husband, in such a way as to give a color or basis to his statement that she had committed these acts of offence. She positively asserted that she never had. On the next day, when confronted with her husband, and charged by him with having committed these acts, she acknowledged that she had thrown certain articles toward him with some degree of force, but claimed that she only intended to frighten him when she feared that he would do her an injury. In reply to a question, she said that she did not think her husband was at that time or ever had been insane.

From the appearance, bearing, conduct, and conversation of Mr. J. while at the asylum, and from a careful study and analysis of the testimony taken, the opinion was formed that he was not insane; and he was discharged from the asylum as an improper subject.

Four months after his discharge, Mr. J. was visited and examined with reference to his mental condition, and inqui-

ries were made of several persons who knew him intimately, in order to ascertain if there had been any subsequent manifestations of insanity. No reason was found for a reversal of the opinion formed at the date of his discharge.

Other illustrative cases might be adduced, both from the records of the New York City Asylum and from the records of other asylums, but these will be sufficient to indicate the character of some of the cases to which reference has been made.

Under the State laws that regulate the admission of patients to asylums for the insane in the city of New York, physicians are required to make an affidavit that a patient is insane, is dangerous, and requires the restraints of an asylum, in order to secure a legal commitment.

By common consent, the term *dangerous* receives a liberal interpretation. It may mean that a patient is violent, or only that he is incompetent to take proper care of himself, and hence needs care and treatment. The reasons on which the diagnosis of insanity *is* founded are not required to be stated. Hence, when mistakes are made, and medical superintendents of asylums receive under their care persons who are not insane, a considerable period of time for observation and study is often required. For the case may be one of recurrent mania of a dangerous character, that has been received during a lucid interval; or it may be one in which there is an ability to restrain and conceal the manifestations of insanity for a considerable period of time. The patient has been declared insane on the affidavits of two respectable physicians, and duly committed to an asylum by a magistrate as a person dangerous to go at large. It would be considered as little less than an insult if a medical superintendent should, after a limited observation of the case, and without a knowledge of the facts on which the diagnosis was made, reverse a judgment that had been founded on observations and inquiries made under the most favorable circumstances. Hence, it may be necessary to retain an improper subject in an asylum for a longer period of time than if he had been unmistakably insane at the time of admission, and had made a speedy recovery.

The diagnosis must be made out and recorded, and this requires a positive judgment founded on well-ascertained facts.

A brief consideration of the methods that ought to be pursued, and of the principles that should be kept in mind during the examination of alleged lunatics, may serve to elucidate the subject, and to suggest the means and regulations adapted to secure the best results.

In the first place, the preliminary examinations and investigations of the physicians should be separate and independent. Neither should be biassed by the methods or the opinions of the other. Each will thus elicit evidence that might not otherwise be obtained. By a comparison of the results of their researches at a subsequent period of the investigation, doubtful points may be established or disproved, and the collateral evidence obtained through testimony may be compared and its reliability tested. Each physician, however, should base his ultimate decision on his own view of the facts and reasonings, unbiassed by the authority or opinions of his colleague. This the law contemplates, else the affidavit of one physician only would be required.

While conducting his investigations, two distinct sorts (classes) of evidence will demand the attention of the physician, and these should be clearly distinguished and separated in his own mind, since they differ not only in character but also in weight, and consequently in the influence they should have on his opinion. There is, first, the evidence gained from a personal examination of the alleged lunatic; and, secondly, the evidence gained from the testimony of others. The former ranks as positive knowledge; the latter only as indicative, collateral, or corroborative evidence. The physician is required to assert his belief in the existence of insanity in a given case, under the formality of an oath. It is clear, then, that the mere assertions of third parties cannot properly form the sole basis of that belief.

The physician, then, should personally examine the alleged lunatic, until some manifestations of insanity are exhibited in his presence. If one visit do not suffice, another should be

made, or else the negative opinion expressed that he had been able to discover no evidences of insanity.

If a personal knowledge of the fact of insanity be required, of what use, it may be asked, is the testimony of others? Of the greatest use, and in many ways. The proofs of insanity gained from a personal examination may be perfectly satisfactory, as regards the simple existence of mental aberration; but yet no sufficient reason may yet have appeared why the restraints of an asylum should be imposed. The person in question may have manifested an insane delusion about something in no way connected with the ordinary affairs of life, and that is very unlikely to exert any influence on his actions. He may believe that he holds communication with a man in the moon, regarding some highly theoretical and abstruse philosophical questions, and yet govern himself and his affairs with propriety and good judgment. This delusion may also be one of long standing, and hence not likely to be relinquished under any treatment or circumstances. Thus far no reason would appear why the patient should be secluded.

If, however, it should be learned, from the statements of friends and acquaintances, that this insane person sometimes made the confidential confession that his lunar communications had convinced him of the infidelity of his wife, and that her death alone could expiate her crime, no doubt would remain that the patient should be confined in an asylum for the insane, as a dangerous lunatic.

Information of the greatest importance is oftentimes thus gained regarding the character and duration of the insanity, and the habits and conduct of the patient. When the physician has been once satisfied of the existence of insanity from his personal examinations, he should avail himself of all the collateral and corroborative proofs attainable; both for the sake of strengthening his conclusions, and also for another purpose, that will shortly be mentioned.

Although in the study of difficult and doubtful cases it is usually best to commence with the personal examination of the alleged lunatic, in order that the mind may be quite unbiassed by the opinions of others; yet, since in certain

cases the patient is inclined to avoid those topics in regard to which evidences of insanity are manifested, especially if he entertains a suspicion that he is himself the subject of inquiry, it is sometimes both proper and advantageous to first obtain the statements of unprofessional observers, at least regarding the leading points.

Both during the examination of the alleged lunatic and during the examination of witnesses who may testify in regard to his insanity, it is well to remember that there may be motives that improperly influence the witnesses, and even the supposed lunatic himself. If any such probable motives exist, the testimony offered should be weighed and scrutinized with especial care.

On the part of witnesses, motives like the following are liable to influence testimony, to the prejudice of the person against whom the charge of lunacy is made: Feelings of revenge or hatred may serve to invalidate testimony. A husband may find that his wife has become a burden, by reason of physical infirmities or advancing years; and that her presence at home interferes with certain projects to which he is strongly inclined. Ungrateful children may wish to get rid of the care or of the support of their aged parents. Avaricious relatives may wish to get the control of property that rightfully belongs to some other member of their family; or a party to a suit at law may wish to invalidate the testimony of a troublesome witness. It should also be remembered that insanity may be feigned for the purpose of escaping the punishment due to crime; to avoid pecuniary liabilities, or the fulfilment of disadvantageous contracts; or simply to secure a comfortable home.

After examining the alleged lunatic with the greatest care, and weighing the testimony offered with the most mature deliberation, the examining physician will sometimes find that, while he is quite satisfied that the person in question is really insane, and needs asylum care and treatment, he still has only vague and indefinite notions regarding the evidence on which his diagnosis has been based. The conviction is very strong in his own mind that his patient is insane, and he may flatter

himself that a generalization of all the particulars that were in his mind but which have escaped his memory, and the impressions gained from his peculiar knowledge and skill as an expert, but which he cannot intelligibly express to others, are sufficient bases for his opinion. This, however, is not enough. He should be able to give the reasons for his belief in such terms as would be intelligible and convincing to other intelligent physicians. Otherwise he does no more than an unprofessional observer who believes a person insane simply because he seems to him to talk and conduct himself in a crazy manner.

It is true that an opinion may properly be formed from a generalization of many particulars. Still the particulars should be sufficiently definite to admit of a clear statement. So also, it is true that an expert may properly be influenced in making up his opinion by acts and appearances, for which he would find it difficult or even impossible to give an exact expression. Still his impressions thus formed should not be the sole basis of an opinion in a matter of such importance.

Now, this confusion and uncertainty of ideas arise in great part from want of method, from neglecting to write down the facts ascertained during the course of the investigation while they are yet fresh in the memory, and from not giving an exact expression to the conclusions that have been deduced. Nothing tends more to give clearness and definiteness to our notions than the exercise of expressing them in writing. Hence it would be of great advantage to the examining physician if this were always done. If his written statement be satisfactory to himself, his conclusions are very likely to be correct; if he fail in clearly expressing the grounds of his diagnosis, he will feel satisfied that the case is still in doubt.

There is another reason why the general diagnosis, and a statement of the facts on which the diagnosis is based, should be reduced to writing. It is, that the affidavits affirming the fact of insanity, to the best knowledge and belief of the testators, should be something more than a mere expression of opinion. The facts on which the diagnosis was founded should be included in the affidavits, the proper distinction being made

between such facts as were within the personal knowledge of the testator, and such as were learned from the testimony of others. The statements of facts would thus become a matter of record, and be available for reference at a subsequent period if required.

There is still another reason why the statement of facts above alluded to should be reduced to writing, and included in the affidavits of the examining physicians.

It is exceedingly desirable that medical superintendents of asylums for the insane should be made acquainted with the history of the patients who are placed under their care, in every particular that has a bearing on the question of their insanity, including hereditary and congenital influences, physical injuries and diseases, predisposing and exciting causes, natural characteristics and habits, and the duration, character, and manifestations of the disease.

Now, patients are frequently received at asylums, especially at city institutions, with regard to whose history no information whatever can be gained by the physicians in charge. Sometimes only negative evidence can be obtained from the patient. Perhaps he cannot or will not tell his own name even, so that there may be doubts regarding his identity as the person named in the commitment. If two such cases be received at the same time, the difficulties are still further increased. The patient may have been intended for another institution, or one person may have been designedly substituted for another. Or, if this difficulty do not exist, there may be important points in regard to the mental or physical condition of the patient that should be known at an early date. The patient may have suicidal or homicidal propensities; he may be treacherous and violent; he may be on the verge of starvation through prolonged voluntary abstinence from food; he may suffer from some physical disability that needs prompt attention, but is not of such a nature as to attract immediate notice; or he may have been exposed to some contagious disease.

At the very least, the examining physician must be aware of the circumstances relating to the patient's mental and

physical condition for a short time previous to his commitment. A knowledge of these is highly desirable, even if nothing further can be learned. In a scientific point of view, all the facts bearing on the patient's condition and past history are of importance.

It has already been recommended that examining physicians write out a statement of the facts on which they base a diagnosis of insanity, for the purpose of enabling them to obtain clearer and more definite notions regarding the mental status of the alleged lunatic. It is also highly desirable that they transmit this statement, with the patient, to the asylum in which he is to be placed; that the statement include both points of diagnosis, and all the causes that have probably had an influence in producing the insanity, as far as these causes could be ascertained; and also that the preparation and transmission of this statement be made obligatory by law. If this were done, the confinement of sane persons in asylums for the insane, would be almost entirely, if not absolutely prevented.

As aids in carrying out this project, blank forms should be furnished to the examining physicians, arranged under the following divisions and titles:

The entire document might be entitled as follows: *Facts and opinions adduced by , M. D., of , No. of Street, in the case of , an alleged lunatic.*

The first division should be entitled thus: *Name and personal description.* The personal description should include the nativity, age, height, color of hair, color of eyes, civil condition, education, religion, occupation, and any other facts that might serve to identify the person. If a foreigner, the date of arrival in this country, the name of the ship on which he came, and the port of entry should also be designated, both as an aid in identification and as an aid in deciding to what State the charge of the patient belongs.

The second division should be entitled thus: *Facts observed and adduced by , M. D., as evidences of the insanity of*

Under this heading should be included references to all the physical and mental conditions bearing on the question of insanity that an examining physician would be likely to observe; as, for instance, the condition of the pupils, tongue, circulation, temperature, etc., also the mental condition in regard to memory, power of apprehension, irritability, antipathies, hallucinations, illusions, delusions, exaltation, depression, etc.

The third division might be entitled thus: *Facts adduced as evidences of insanity, and presumable causes of insanity, in the case of , that have been ascertained by , M. D., on what he believes to be reliable testimony.* Under this division should be enumerated points bearing on the mental condition, as under the second division, peculiarities in the habits, propensities, disposition, conduct, etc.; mental causes, such as losses of property or of friends, domestic troubles, disappointments, religious excitements, etc.; physical causes, such as hereditary and congenital influences, loss of sleep, injuries to the head, physical diseases, etc.; and such other particulars as would naturally belong to this category. Under this division should also be stated the number, duration, and character of any previous attacks of insanity that may have occurred.

The fourth division shall be entitled thus: *Affidavit of , M. D., regarding the mental condition of .* Under this division it should be stated that the testator visited the alleged lunatic at a specified place or places, on a specified day or days, and for specified periods of time; that he obtained what he believes to be reliable testimony from parties who should be named; that the results of his investigations are embodied in the preceding divisions, and that on the facts there stated he bases the opinion that is of unsound mind, and is a fit subject for care and treatment at an asylum for the insane.

The specific points of inquiry, being thus methodically arranged and printed in the blank forms, would serve as great aids to the examining physicians during the prosecution of their investigations. One form should be provided for each

physician, and, as intimated above, these affidavits should be forwarded with the patient to the asylum, the court that issues the commitment making such record of the facts as legal safeguards or custom may require.

The law should also require that a personal examination on the occasion of which evidences of insanity were observed should have been made within a limited and specified period of time previous to the making of the affidavit; also that the patient be actually received at the asylum for which the commitment is made out within a limited and specified period of time thereafter; and also that a want of compliance with either of these conditions will render the whole procedure invalid.

The question now arises whether these examinations, investigations, and affidavits should be made by general practitioners of medicine, as at present, or whether these duties ought not rather to be performed by men supposed to be especially conversant with the subject, and who have been duly authorized by law to take sole charge and responsibility in cases of lunacy.

The following considerations may be urged in support of the last-named method: It is acknowledged that sane persons are sometimes committed to asylums for the insane. It is also acknowledged that some cases of insanity are difficult of diagnosis, and that general practitioners of medicine are in many instances poorly versed in the subject of mental diseases. Hence it may very naturally be inferred, on a cursory examination of the subject, that experts in insanity should be appointed to conduct all investigations, and to make all decisions in cases of lunacy.

There are many and very cogent reasons, however, in favor of the existing method; and these reasons will be still stronger when the method has been improved in some way similar to the one just recommended. Some of these reasons are as follows:

It is of great importance that there be no obstacles in the way of placing such patients as are really insane in asylums. Any difficulties, publicity, or unusual proceedings, would serve

to hinder their early admission, and hence diminish the probabilities of a cure. Under the present system, even if it were modified as recommended, the difficulties are very slight. The friends have only to call in the family physician, whom they consider at the same time as a family friend. The physician usually is already well acquainted with the patient. He makes a visit without causing any disturbance or excitement. He makes a diagnosis with comparative ease, from the fact that he is able to compare his personal knowledge of the present condition with his personal knowledge of the past condition of the patient. Oftentimes he is thoroughly conversant with the patient's physical and mental history from childhood. He may even be acquainted with the family history and hereditary influences. If required by law, a neighboring physician may be found who also knows the leading points in the case. They have only to make the necessary affidavits, and a commitment is secured.

The evidences of insanity in the case of a very great majority of those who are placed in asylums for the insane are so clear and unmistakable that no difficulty exists in the way of making the proper diagnosis. If difficulties are experienced, the form of affidavit proposed would be found of great assistance, and might perhaps remove all difficulties. In any event, a consultation would be available if the family physician should finally distrust his own abilities or judgment.

General practitioners of medicine ought to have a fair knowledge of mental diseases, as they are now expected to have of surgery or midwifery. Every physician does not claim to be an expert in surgery, and to give the most profound opinion on a case of extraordinary obscurity or difficulty, yet he is expected to understand and scientifically treat the great majority of cases that are committed to his care. He should, in like manner, be able to comprehend the great majority of cases of lunacy that come under his notice.

It is not every person who is insane that needs to be secluded in an asylum. The advice of a general practitioner of medicine may at times be required in the treatment and management of these cases. The condition of the mind exerts a

very important influence on the condition of the body, and *vice versa*. Physicians need fully to appreciate the importance of these reciprocal influences. The approach of insanity is often slow, and so obscure as to escape the notice of those who have given no attention to mental diseases and their causes. If detected at an early day, the actual outbreak of the disease might without doubt oftentimes be averted. General practitioners have much better opportunities than superintendents of asylums for observing the *prodromata* and the early stages of insanity, and hence are their natural allies, both in the general study of the disease and in the study of any particular case; but to afford really valuable assistance, either from a practical or theoretical point of view, they should be reasonably well informed on the subject in question.

For such reasons as these it has become a well-accepted principle that general practitioners of medicine ought to be conversant with the subject of mental diseases. One after another the different medical colleges are adding professors of psychological medicine to their staff of teachers, so that very soon all graduates in medicine will be as well instructed in regard to mental diseases as they now are in other branches of the science.

If, however, by the appointment of a particular set of men to make out the diagnosis and decide regarding the custody, in all cases of insanity, physicians should be led to infer that mental diseases are too difficult of comprehension to be understood by the profession in general, they would be very unlikely to increase their fund of information on the subject. If they were not called upon to investigate those cases that naturally come under their notice, they would be quite certain to lose all interest in the study of mental diseases. This would be a retrograde movement — a result much to be regretted, both in the interests of science and of the community at large.

There are two classes of lunatics for which, thus far, no improved method has been suggested, in accordance with which they may be placed in asylums for the insane. Reference is made to criminal lunatics, or those that in any way

become subjects of a legal investigation; and cases in which no evidences of insanity could be detected by the examining physicians as a result of their personal observations, but in which unprofessional observers, of greater or less reliability, have noticed presumable evidences of insanity.

Some of the objections that have already been urged in this paper against a jury-trial, as a method of securing the commitment of lunatics to an asylum, are equally cogent in the case of criminal lunatics in behalf of whom the plea of insanity is interposed, and indeed in all cases of lunacy that for any reason become causes of litigation. Ordinary investigation in cases of lunacy have, in many instances, entirely failed in eliciting the truth and establishing justice, through faulty methods and lack of the requisite skill and information on the part of judges and jury. Facts and opinions that are presented are not rated at their just value. The counsel for each side often submit hypothetical cases to the medical expert which differ in essential particulars, while neither hypothetical case is likely to be a true statement of facts. The expert testimony may thus be apparently at variance, and hence considered unreliable, although the experts might entirely agree if they were to testify regarding the same facts. Experts are themselves liable to be unconsciously biased, from having been employed by one of the parties to a suit, and remunerated for testimony expected to be in favor of a particular side.

These are among the reasons why some mode of procedure different from the one now in use should be adopted in the legal investigation of cases of lunacy. The most rational and effective mode would seem to be the appointment of men who have the confidence of the medical and legal professions, and of the community at large, and who are thoroughly informed on the subject of insanity, both in its medical and its legal aspects, as a court of inquiry, in all cases of lunacy that are to be submitted to the civil or criminal courts; and that this court, or commission in lunacy, be in its peculiar province clothed with all the powers and privileges possessed by other courts.

The difficulties that now exist in those cases in which the examining physicians can detect no evidences of insanity as a result of their personal observations, but which are probably insane, are these: Since the evidences of insanity are gained from third parties who may or may not be reliable, or who, if reliable, may seem to differ in essential particulars, these parties should be examined under oath, and in accordance with the methods adopted for the examination of ordinary witnesses. But general practitioners of medicine do not have the power of administering oaths, nor are they skilled in the methods of eliciting truth by the examination of witnesses. These cases would also be proper for the investigation of such a court or commission in lunacy as the one above recommended.

The design of this paper has been simply to suggest certain improvements in the methods of examining alleged lunatics, and of placing them in asylums for the insane, to the end that mistakes in diagnosis may be avoided, and also that medical superintendents of asylums may be promptly advised of facts that are of great value, both in a scientific point of view, and as aids in devising the early and rational treatment of their patients.

MEDICO-LEGAL CONSIDERATIONS

UPON

ALCOHOLISM

AND THE

MORAL AND CRIMINAL RESPONSIBILITY OF INEBRIATES.

BY PALUEL DE MARMON, M. D., OF KINGSBRIDGE, N. Y.*

In order to well understand the real value of the subject, it is necessary to see first what are the physiological properties of alcohol, and the different degrees of alcoholic intoxications.

According to the recent researches of Maurice Perrin, it has been ascertained that "alcohol acts as a regular dynamic agent in the system; that it remains in the blood; that it exerts a direct and primitive action upon the nervous centers, of which it *modifies*, *perverts*, or *abolishes* the functions; that it does not become transformed or destroyed in the blood or respiration; that it accumulates in the nerve-centers and the blood; and that, finally, it is expelled in nature from the economy by all the ways of elimination." This author found also, by experiments made upon himself, that the use of alcohol diminishes the quantity of carbonic acid exhaled, and lessens in the same proportion the intra-vascular oxidation, and consequently the production of animal heat; also, that it

* Read before the Medico-Legal Society, New York, March 31, 1871.

increases the secretion of urea. We would rather say that it decreases its excretion by preventing disassimilation.

It is not an aliment proper, but, equally with opium, it prevents to a certain degree denutrition. Like all substances producing stupefaction when given in a large dose, it is an excitant when given in a small one.

It causes the temperature of the body to *decrease*, and that of the brain to *increase*, thus explaining the effect of congestion of this organ.

Allow me here to give you the results of a few of my experiments upon this important subject; they have, so far, been made upon cats and rabbits.

EXPERIMENT 1.—Male rabbit, 4 months old. Thermometer 75° F.

Normal temperature in the rectum, . .	104°
" " of the brain, . .	$103\frac{3}{8}$°

Temperature 3 minutes after death by strangulation:

Rectum, ...	105°
Brain, ...	$104\frac{2}{8}$°

In this case no alcohol was given, the object of the experiment being to ascertain what was the difference of temperature between the rectum and the brain; it was repeated upon ten different subjects, and the result was always the same, *the normal temperature of the brain was always lower than that of the rectum.*

Having thus found these data, I proceeded to make my experiments with alcohol.

EXPERIMENT 2.—Female rabbit, 4 months old. Thermometer 90°.

Normal temperature in the rectum, .	$105\frac{1}{8}$°

I gave the animal ʒ ij. of pure alcohol mixed with ʒ iij. of water by means of a sound introduced in the stomach.

In half an hour,	temperature	of the	rectum, .	104⅛°
In one hour,	"	"	"	103°
In two hours,	"	"	" .	102⅜°
"	"	of the	brain,	103⅜°

In the above case the dose was small, the animal being only we may say in the second stage of intoxication, the temperature being, however, one degree higher in the brain than in the rectum.

Experiment 3.—Female rabbit, 4 months old. Thermometer 66° F.

Normal temperature in the rectum, . . 102⅞°

Administered as above, alcohol ʒ jv., diluted in same quantity of water.

Forty-five minutes after,	rectal	temperature,		101⅛°
One hour	"	".	"	101⅛°
One hour and a half,	"	"	"	100°

At this period the animal lay on the grass in a state of almost complete insensibility. He was, we may say, dead drunk.

I then made a crucial incision of the skin over the parietal region, then trephined the bone, and plunged my thermometer into the substance of the brain, the animal not showing during the operation any signs of sensibility.

Temperature of the	brain,	. . .	102⅜° F.
"	" rectum,	. . .	100°
	Difference, 2⅜°.		

Now, if we add to this the difference existing normally between the rectum and the brain, viz., 1⅜°, we find an increase of 3¾°, caused by the action of alcohol upon this last organ.

Although this is not exactly the place to report these experiments, which I propose to publish at length in another paper, I must, however, call the attention of the medical profession to a few important physiological and pathological points.

1st. To the lower normal temperature of the brain compared with that of the body.

2d. To the irregular temperature of rabbits, whether taken in warm or cold weather.*

3d. Upon the influence of alcohol as lowering the temperature of the body, and increasing that of the brain.

This last being proved by experience and well known by its pathognomic symptoms, but not proved so far by direct experiments.

DIFFERENT DEGREES OF DRUNKENNESS.

In acute alcoholism, or accidental drunkenness, we have three periods: first, excitation; second, perturbation; and, third, stupefaction.

In the first period, which, in accidental drinkers, is produced after the ingestion of a few glasses, the subject becomes communicative, justifying then the old adage, *In vino veritas;* he is jolly, good-natured, witty; his natural timidity has been changed into boldness; he is kind, generous, friendly, as one who feels happy and has nothing to trouble his mind; he is sociable and obliging; the words flow out of his mouth like a

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* This remark is suggested to me from the results given by Gavarret in his tables upon the temperature of animals, and in which I find that the temperature of rabbits is given by

				Fahrenheit.	
Prevort & Dumas, and taken in the rectum is				100°	40′
I. Hunter,	"	"	"	99°	50′
Delaroche,	"	"	"	103°	28′
"	"	"	"	103°	46′
"	"	"	"	104°	00′

It is not said in those tables if the observations were made in winter or summer, but according to my own observation I found it to be as follows:

	Fahrenheit.		Fahrenheit.
In the rectum,	104°	Ambient temperature,	75°
" "	105⅞°	" "	90°
" "	102⅞°	" "	66°
" "	105⅜°	" "	8°
" "	103⅜°	" "	8°
" "	104°	" "	20°

stream. It is this period of happiness so well painted by Macnish* in the following terms: "The consequences of drunkenness," says he, "are dreadful, but the pleasures of getting drunk are certainly ecstatic. While the illusion lasts, happiness is complete; care and melancholy are thrown to the wind; and Elysium, with all its glories, descends upon the dazzled imagination of the drinker. Some authors have spoken of the pleasure of being completely drunk; this, however, is not the most exquisite period. The time is when a person is neither drunk nor sober, but neighbor to both, as Bishop Andrew says, in his 'Ex-ale-tation of Ale.' The moment is when the ethereal emanations begin to float around the brain; when the soul is commencing to expand its wings and rise from earth; when the tongue feels itself somewhat loosened in the mouth, and breaks the previous taciturnity if any such existed." In this period the individual is very seldom dangerous, and is fully responsible for his acts.

If he continues to drink, his ideas become obtuse; his tongue gets thick; he speaks louder, for on account of the buzzing sensation in his ears his auditive power is blunted so he does not hear himself speak, and judges of others by himself; the merry feeling of the first period has been replaced by an excess of susceptibility and irritation; he does not *take* a joke, and is ready for fight; if you don't listen to him he gets mad. Muscular strength is in that degree at its maximum; at that time the drunkard becomes a bore to all those surrounding him; he is not conscious of what he says or of what he does, and it is generally then that he is more apt to commit a crime.

"In the second period of drunkenness," says Hoffbauer, "a man has still the use of his senses, although they are notably affected; but he is out of his wits; memory and intellect have left him; he acts as if living only for the present; for he does not think of the result of the actions he may commit, and he has forgotten the past. The least occasion is sufficient to awaken in him the greatest passion, although his mind may

* "Anatomy of Drunkenness."

be changed very easily. In this condition he is so much the more dangerous for himself and for others, that he is subjected to an irresistible impulse, and that he knows rarely what he is doing; for, in order to be conscious of what is done at the time, it is necessary to know what was done an instant before. He is, then, assimilable to a maniac, and cannot be made responsible for his actions, although he is responsible for his drunkenness."

This question of responsibility has been advocated and argued for and against as all questions of law, when the right, seen separately, seemed to be on both sides. We may ask questions, and add another argument still: Insanity is a legal excuse for crime. Drunkenness, although not an excuse, is assimilable to, and in its second and third degrees is really, insanity. Then, would an insane man committing a crime while under a fit of alcoholic intoxication be less insane for it, and liable to a different punishment?

An insane man or a drunkard cannot be responsible for a deed committed against his will, and, where there is no reasoning, there is no will, for reasoning cannot exist without will. In a state of drunkenness man is deprived of reason. Thus, he is not willing. In this case, the body—the animal, if I may so speak—acts without consent of the mind, and any actions committed with absence of mind, consequently in a state of insanity, whether it be temporary or permanent, cannot make its author responsible.

(I wish it to be well understood that I do not mean to excuse drunkenness, my views being, on the contrary, diametrically opposed to it. I only emit an argument, and hope it will be combated. We will see very soon the different opinions upon this subject.)

The second stage, however, does not last long, but changes into a third one—brutishness and somnolence. Relaxation of the whole muscular system has taken place; the subject is not able to walk; he is vomiting; his mind is stolid as well as all his faculties; he cannot find his house, nor does he know his friends. He has in that period reached a degree below the swine, for this last can find its own pen and knows its

own young ones.* In that third period man cannot commit a crime, or, if he does, it must be involuntarily and by accident; but it is at that period that a crime may be committed upon him, as he is unable to defend himself; and as in this period, also, there is a great degree of anæsthesia, the most severe wounds, the most painful operations are not felt. We know that, before anæsthetics were used in surgical operations, barber-surgeons used to intoxicate patients until complete relaxation of the muscular system was produced, before making an operation or reducing a fracture.

Drunkenness may be produced upon a child, a woman, with the guilty intention of committing a rape. In this case, if intoxication has been pushed to a high degree, the victim is totally unaware of the deed committed upon her. It may in such instances create difficulties as to the evidence in the case. No traces of resistance are shown, above all, if the deed has been committed upon a married woman. If it has been committed upon a virgin, it is different. Traces common to this crime may be easily detected.

A man will get intoxicated sometimes with the intention of committing a crime, and prepare an excuse under the plea of drunkenness. The laws of the State of New York do not accept the excuse as long as drunkenness is a voluntary action. We will see farther that, however, where drunkenness has degenerated into a mental disease, jurists think differently.

Medico-Legal Diagnosis.—In a medico-legal examination of a case of alcoholism, "the first point to establish," says Tourdes ("Dict. Encycl."), "is the fact of alcoholism. This question is asked in most of criminal cases. Sudden death, accidents, as well as suicide and homicide, require this investigation.

* Casper says moral liberty varies according to the degrees of drunkenness: the shades are difficult to discern, the stages are transformed rapidly. At what moment are conscience and will lost? The first glasses, says an Italian proverb, give lamb's blood, which causes one to be good-natured; the second ones give tiger's blood, which makes one furious; the last ones, hog's blood, which causes one to roll in the mud. These are the three periods of drunkenness—excitation, perturbation, and stupefaction—as I have already described them.

Medical evidence is furnished by the symptoms, the post-mortem and chemical examinations.

We will not enter into these details, which would lead us too far and cause our remarks to extend beyond our limited time.

Intoxication does not present the same character when caused by different drinks. Spirituous liquors are obtained, some by fermentation, and others by fermentation and distillation. They all have the same active principle, viz., alcohol, in a more or less large quantity. Such are wine, cider, beer, brandy, rum, whiskey, arrack (made with fermented rice and catechu), absinthe, gin, etc. Absinthe is the most hurtful, and lately the name of absinthism has been given to the disease caused by its abuse.

All these beverages do not contribute in an equal proportion to the production of the disease, but generally it is possible to ascertain their degree of nocuousness by the state of concentration of the alcohol. It would, however, little conform to observations to attribute to them identical effects. Professor Trousseau (Dict. en 30 vol.) finds special properties in champagne, Rhine wine, spirits of grain and of potatoes. "Drunkenness caused by wine," says M. Bouchardat, "exerts some less marked and slower modifications upon innervation and digestion than intoxication by brandy; death is also less rapid than by the abuse of strong liquors."

Cider acts somewhat like sparkling wines, brings its action upon the nervous system, and, besides, causes some affection of the digestive organs, such as indigestion, diarrhœa, gastralgia, and sometimes leads into glycosuria. Beer strongly alcoholized may produce the same effects as wine, but intoxication produced by it is generally more dangerous. This beverage generally leads into obesity, and into the decrease of the active forces of the economy.

"Malt liquors, under which title we include all kinds of porter and ales," says Macnish, "produces the worst species of drunkenness; as, in addition to the intoxicating principle, some noxious ingredients are usually added, for the purpose of preserving them and giving them their bitters. The hop

of these fluids is highly narcotic, and brewers often add other substances to heighten its effect, such as hyoscyamus, opium, belladonna, cocculus Indicus, laurocerasus, etc. Persons addicted to malt liquors increase enormously in bulk. They become loaded with fat; their chin gets double or triple, the eye prominent, and the whole face bloated and stupid. Their circulation is clogged, while the pulse feels like a cord, and is full and laboring, but not quick. During sleep the breathing is stertorous.

Everything indicates an excess of blood, and when a pound or two is taken away, immense relief is obtained. The blood in such cases is more dark and sizy than in the others. In seven cases out of ten, malt liquor drunkards die of apoplexy or palsy. If they escape this hazard, swelled liver or dropsy carries them off. The abdomen seldom loses its prominency, but the lower extremities get ultimately emaciated. Profuse bleedings frequently issue from the nose, and save life by emptying the blood-vessels of the brain.

The effects of malt liquors on the body, if not as immediately rapid as those of ardent spirits, are more stupefying, more lasting, and less easily removed. The last are particularly prone to produce levity and mirth, but the first have a stunning influence upon the brain, and in a short time render dull and sluggish the gayest disposition. They also produce sickness and vomiting more readily than either spirits or wine.

Both wine and malt liquors have a greater tendency to swell the body than ardent spirits. They form blood with greater rapidity, and are altogether more nourishing. The most dreadful effects, upon the whole, are brought on by spirits, but drunkenness from malt liquors is the most speedily fatal. The former break down the body by degrees; the latter operate by some instantaneous apoplexy or rapid inflammation.

No one has ever given the respective characters of the malt liquor and ardent spirit drunkard with greater truth than Hogarth, in his Beer Alley and Gin Lane. The first represented as plump, rubicund, and bloated; the second, as pale,

tottering and emaciated, and dashed over with the aspect of blank despair.

The expert shall have to make the differential diagnosis between alcoholic and other intoxications. A poison may have been given to an individual, and to conceal the homicide a dose of alcoholic liquor or wine be injected in the mouth and stomach to give rise to the suspicion that the subject died of drunkenness. In this case, the liquor injected would be nearly all found in the stomach; some might be found also in the trachea, but none would be found in the brain, where it is always found in subjects poisoned by alcohol. This absence of alcohol in the brain, after having been found in the stomach, should of itself lead the expert into the suspicion that the subject died from some other cause, and lead him to look for that cause.

The medical expert must also detect simulated drunkenness, as well as intoxication caused by other substances, such as opium, belladonna, datura stramonium, ether, chloroform, turpentine, naphtha, benzine, or carbolic acid; which, especially the two last, produce regular drunkenness.

The effects of intoxication by alcohol are sometimes very sudden, so much so that in some cases instantaneous death has been produced in individuals swallowing one quart or more of brandy at one time. Of all intoxicating liquors, potato whiskey is the one which produces the most disgusting drunkenness.

Alcoholism may be mistaken for the symptoms of a disease; for example, for the first delirium of typhoid fever, congestion of the brain, apoplexy, the sequæla of a wound upon the head. Very often a man attacked with concussion of the brain after a wound, or one having been exposed to an intense cold or heat, has been taken for a drunkard, and *vice versa*.* The diagnosis must then be based upon the presence of alcohol and the comparative signs of the intoxication and the wound. The difficulty, however, is greater if a consecutive disease, as apoplexy, for example, is added to the effects of drunkenness,

* "Dict. Encyclopédique."

or if it is complicated from the effects of a wound. In this case, then, both conditions must be examined and diagnosticated separately.

According to Ware and Calmeil, delirium tremens is seldom a cause of death, being 1 to 20; but Grisolle * thinks the proportion to be much higher, as it is demonstrated by statistics published in 1842, at Brussels, by Dr. Bougard: out of 447 cases of delirium tremens observed at Copenhagen, Paris, and Brussels, there were 85 deaths, being one-fifth of mortality. Death, says Grisolle, is the consequence of some cerebral complication, exhibited by convulsions in some, whilst in others it is caused by diseases independent of the brain. Finally, most of them die in consequence of the perturbation experienced by the nervous system; they fall suddenly into collapsus, and succumb abruptly after an agony of only a few minutes.

Wounds.—In regard to traumatism, we all know what influence is exerted upon wounds by alcoholism, although they often differ very much, and depend upon whether the subject is laboring under acute or chronic alcoholism, for the consequences and the treatment are very different in both cases.

Drunkenness acts upon the traumatism as traumatism acts upon drunkenness.† In the first case, drunkenness plays an important part in a hygienic and medico-legal point of view as a cause of the traumatism. It complicates the diagnosis, and gives rise to important questions of intervention, such as an indication of delay in the operation, and a contra-indication to the administration of chloroform. In the second case, the traumatic action seems to act upon the drunkenness. It may increase it, and necessitate an active treatment, of which a striking example is the observation of Simpson, who performed tracheotomy in a case of drunkenness, and saved his patient.

"The most slight traumàtic lesions," says M. Peronne, "especially the wounds upon the head, may have the most serious consequences when the subject is under the influence

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* "Traité de Pathologie interne."

† Peronne, "De l'Alcoholisme dans ses Rapports avec le Traumatisme."

of alcohol; but accidental drunkenness does not seem to have any marked influence upon the future consequence of the wounds.

"Traumatism is often the occasional cause of acute alcoholic accidents in individuals laboring under chronic alcoholism, the most frequent of which is delirium tremens.

"The gravity and frequency of alcoholic delirium seem to have more effect upon traumatisms exposing to alteration of the blood, and delirium is declared so much the sooner as traumatism exposes more to these alterations. The nervous delirium as described by Dupuytren must certainly have been alcoholic delirium.

"Finally, alcoholism contra-indicates all operations not necessarily urgent; but, if immediate intervention is indispensable, it will be advantageous to act promptly before traumatic fever sets in."

These questions are of the highest importance in a medico-legal point of view; and both wounds and subject in cases of assaults or murders must be carefully and separately examined, as the wound inflicted may become mortal in an alcoholic subject, which otherwise would have been of no consequence in a sober one. The wound or contusion is then only the occasional, the secondary cause; drunkenness is the essential, the real, the predisposing one, since, according to the judicious remark of Tardieu, in death supervening so suddenly in drunken subjects, pulmonary and cerebral apoplexy are, if not constant, at least very frequent and almost characteristic lesions.

Spontaneous Combustion.—Since the medico-legal examination of the Countess of Goerlitz's murder, there has been a great doubt as to the veracity of the cases reported as cases of spontaneous combustion, and the fact is that modern authors do not speak of it; it seems to have been buried in oblivion. I shall here revive the subject, and report a few cases; for, notwithstanding the conclusion in the report of MM. Siebold and Tardieu in the case above cited, and which says that, of the pretended facts of human spontaneous combustion reported, not one has been attested

by competent witnesses, the question still remains unsettled.

Among the many cases reported by Lair * is one reported by Joseph Bataglia, surgeon at Ponte-Bosio. Don G. Maria Bertholi, a priest of Mount Valerius, went to the fair of Filetto, and afterwards visited a relation in Fenilo, where he intended to pass the night. Before retiring to rest, he was left reading his breviary, when, shortly afterwards, the family were alarmed by his loud cries and a strange noise in his room. On opening the door, he was lying prostrate on the floor, and surrounded by flickering flames. Bataglia was immediately sent for, and on his arrival the unfortunate man was found in a most deplorable state. The integuments of the arms and back were either consumed or detached in hanging flaps. He said that he felt all of a sudden as if his arm had received a violent blow from a club, and at the same time he saw blue flame rising from his shirt-sleeves, which were consumed without having burnt the wrists. A handkerchief which he had tied round his shoulders, between the shirt and the skin, was intact. His drawers were also intact; but, strange to say, his silk skull-cap was burnt, while his hair bore no marks of combustion. He died the fourth day; his body exhaled an intolerable putrid smell, and was full of maggots.

Case II.—An old woman, very devoted to ardent liquors, and who never went to bed without being drunk, was found reduced to ashes; both femurs and several other portions of bones were not entirely consumed. The case is reported in the *Commentaries of Leipsic.*

Case III.—Another fact of the same nature is reported by Jacobæus in the *Annals of Copenhagen.* In 1 92, a woman who was making a great abuse of spirituous liquors, and took very little food, having fallen asleep upon a chair, was found entirely burned, except the cranium and the last articulations of the fingers.

Case IV.—In 1765, Countess Cornelia Bandi, of Cesena,

* Lair, P. A.: "Essai sur les Combustions Humaines produites par un long Abus des Liqueurs spiritueuses." In 8vo. Paris. 1800.

who was in the habit of using frictions of camphorated spirits, was found consumed close to her bedside. No traces of fire could be observed in the room; the very lights had been burned down to their sockets; but the furniture, closets, and linen were covered with grayish, damp, and clammy soot. (Bianchini.)

There are on record about fifty cases of human combustion, of which forty-five are reported by Lair (*loc. cit.*).

It is possible that these accidents may be attributed to the escape of hydrogen gas. The presence of this inflammable body in animals is evident. Morton saw flames issuing from the body of a pig. Bonami and Buysch, with a lighted candle set fire to the vapor arising from the stomach of a woman whom they were opening. In the *Memoirs of the Academy of Sciences* of Paris, of 1751, we find the case of a butcher who, on opening the body of an ox that had died after a malady which had caused him to swell considerably, was severely burned, as well as a little girl who was alongside of him, by an explosion and a flame which rose to the height of about five feet, lasted several minutes, and emitted a very disagreeable odor.

Sturm, Nieremberg, Bartholin, Gaubius, Gmelin, speak of fiery eructations when, after copious libations, drinkers expose themselves to a cold atmosphere.

Liebig remarks that the forty-five or fifty cases reported since 1725 present all this in common: that, first, they all took place in winter. Second, in alcohol drinkers in a state of drunkenness. Third, in countries where apartments are heated with open fire-places.

But such facts are so rarely observed in our days that it is difficult to confirm the theories and reports of old authors by new and well-identified observations. A paper upon the subject of spontaneous combustion has been lately written by Prof. Alexander Ogston, of Aberdeen, and published in *The British and Foreign Medico-Chirurgical Review*, No. 89, January, 1870, in which he classifies the cases in two classes. The spurious cases belong to the first class, which comprises those based on the most unreliable data; they, however, make a

small percentage. The second class comprises cases whose deductions are based upon conditions which cannot be denied as being true and doubtful, and are admitted indiscriminately as evidence. This author counts fifty-seven cases as an exact number of those on record; and he himself reports one case he has observed, with his father, on the 14th of March, 1869.

They were requested to examine the remains of Mrs. Warrack, of Ross, aged 66, who resided alone in a house near the Bridge of Dee, Aberdeen. She was said to have been stout, of intemperate habits, and her son stated that he had left her at 10 A. M. on the 14th in her usual health. She was found at 11 A. M. on the same day, lying burnt on the lower steps of the stair of her house, on her left side. The condition of the body showed that the fire had caused the greatest alterations in it. The hair was burnt off; the soft parts of the face and front of the head burnt off, the bones exposed, blackened and calcined; the back of the head, the neck, and the trunk everywhere converted into greasy charcoal to the depth of about an inch; the skin totally removed, and the bones of the trunk lying bare, blackened, and calcined; the front wall of the abdomen totally destroyed; all the internal organs were burnt to ashes, black and greasy; the right foot totally detached from the leg, and converted into a soft, black, greasy, and shapeless cinder, through which the finger could be pushed with ease, etc. Not a vestige of clothing remained anywhere.

Dr. Beveridge, in a number of experiments as to the combustibility of human tissues, concludes, first, that, while simple heat or exposure to a red flameless heat is slow in charring and destruction, the exposition of tissues to a flame gives rise to a much more rapid process of destruction; second, that in portions of flesh removed from the human body, if without fat, the charring is slow and very gradual, while, if fat and placed next to the flame, the cutis is speedily destroyed and charred, and, cracking, permits the liquefaction and flowing out of the subcutaneous fat, which, taking fire, envelops the whole mass in a flame so strong as to speedily reduce it to the condition of a black, greasy cinder.

Illusions and Hallucinations.—These two conditions, although not identical in their effects, are connected together, produced by the same cause, and one is often the consequence of the other. They are intimately connected with the question now occupying us, as being frequently the cause of murder or suicide.

By illusion we understand a mental condition in which the subject takes one thing for another, or one person for another, or for an animal or a devil. Briere de Boismont ("Des Hallucinations") relates a number of those cases, a few of which we shall repeat. In one case, a woman killed her husband with an iron bar, having taken him for the devil, and, although she afterwards recognized her mistake, she always persisted in saying that she took him for this evil spirit. Once before, mistaking her sister for a cadaver, she took her by the neck, and was going to throw her out of the window.

King Theodoricus, blinded by jealousy, and yielding to the perfidious suggestions of his courtiers, ordered the Senator Symmachus, one of the most virtuous men of his time, to be put to death. This order is hardly executed before the king is overwhelmed with remorse; he incessantly reproaches himself with that crime. One day a new kind of fish is served upon his table; he gets filled with terror, for in the head of the fish he has recognized that of Symmachus.

M. C. ("Obs." 23), after a mental affection of which he is now completely cured, returns to his family. The next day he goes down in the cellar, followed by his wife. His sister, not seeing them return, goes down also. The absence of these persons was so prolonged that the servant becomes anxious, and goes to see what may be the cause of the delay, when she suddenly reappears, and runs out of the house screaming terribly. From the expression of fright painted on her face, something frightful is expected; the police arrive; two women are seen swimming in their blood, and a man sitting on a barrel, with a razor lying at his feet. Being questioned, all he can answer is that he has seen the devil, and has defended himself against him. This man, whose mental disease had been ascertained, was sent to Charenton, and after-

ward transferred to a private asylum, where Briere de Boismont saw him for nearly a year. He spoke rather reasonably, and his conduct presented nothing peculiar. The doctor was struck by only one thing: every time the washerwoman came he saw the woman's clothes spotted with blood, and his eye took a sinistral expression. C., tired of living in an asylum, claimed his liberty, and obtained it, notwithstanding the protestations of Esquirol and Marc. A few years after, he assaulted the woman who lived with him, taking her for a demon who was reproaching him for his crimes; she only escaped an imminent death by jumping out of a window. Twelve days after, he expired in an asylum in the midst of raving madness, thinking himself surrounded by phantoms and devils.*

Marc relates a case where, two friends being intoxicated, the one killed the other under an illusion that he was an evil spirit. The drunkenness of the accused was held to have been voluntary, and he was condemned to ten years' imprisonment with hard labor. A case of this description (Taylor) was tried at the Norfolk Lent Assizes, 1840 (Reg. *v.* Patteson). A man while intoxicated killed his friend, who was also intoxicated, under the illusion that he was some other person who had come to attack him. The judge made the guilt of the prisoner to rest upon whether, had he been sober, he would have perpetrated the act under a similar illusion. As he had voluntarily brought himself into a state of intoxication, this was no justification. He was found guilty of manslaughter, and sentenced to *two months*' imprisonment.

"The proof of drunkenness may fail," says Taylor,† "but still, if the party charged with the death acted under an *illusion*, he will be acquitted. In Reg. *v.* Price (Maidstone Summer Assizes, 1846), it was proved that prisoner, who had been on friendly terms with deceased, was going home at night,

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* Briere de Boismont: "Observations Médico-légales sur la Monomanie Homicide." Paris. 1827.

† "Medical Jurisprudence."

having previously been in company with deceased at a public-house, when, according to his statement, a man sprang upon him from the hedge by the roadside, and demanded his money and his watch, or else he said he would take his life. The prisoner closed with and beat him severely, inflicting such injuries that he died shortly afterwards. The supposed robber turned out to be the friend, and it was believed that he had made an attempt to rob the prisoner jokingly, which, however, had ended in this fatal manner. The prisoner throughout told the same story, and there did not appear to be the slightest ground for believing that it was untrue. Coltman, J., after hearing the evidence of the witnesses, said it appeared to be quite clear that the prisoner had acted under an impression that he was protecting his own life from the attack of a robber, and under such circumstances he could not be held to be criminally responsible. The jury accordingly returned a verdict of *not guilty*, and the prisoner was discharged."

Hallucination is a mental condition in which the perturbation of the senses is such that the hallucinated sees, feels, hears, or smells things existing only in his imagination. The pretended sensations of the hallucinated, says Esquirol, are images or ideas reproduced by memory, associated by imagination, and personified by habit.

Hallucinations caused by alcoholism have generally the same character. In some cases, the subject is persecuted by men forcing him to endorse a forged check, as I have witnessed one a short time ago; another one is terrified by the presence of thieves, thinks he is tied up, and is going to be thrown in a river; in other cases, the prominent idea is the presence of devils or animals. Morel remarks that, in the principal of this wretched passion, it is not infrequent to see phosphorescent lights presenting the most fantastic forms. The patients have frightful dreams, they see hideous objects, threatening faces, unclean animals of all sorts, which they try to keep away in extending the arms or covering their faces. In the period when the alcoholist experiences some formications in the legs, they may be illusioned in the same

way as hypochondriacs. An insane man of this category followed, with a sensation of stupid uneasiness, the motions of a cat, which, climbing on his legs, stuck its claws in his flesh. When arrived at the paroxysm of pain, the illusion was becoming so complete that this patient would catch hold of and evidently squeeze his scrotum, thinking he had caught the animal.

Hallucinations are more generally a cause of suicide, either voluntary or involuntary; and is it astonishing that it should be so? A man thinks he is pursued by some one who wants to kill him; he runs out through a window, taking it for a door, and kills himself in the fall. Another one is so oppressed and persecuted by the sensation of animals running on him to devour him that he hangs himself. Briere de Boismont ("Du Suicide et de la Folie Suicide") relates the following case:

X., a day-laborer, had been, through drinking excesses, subjected to a superexcitation, revealing to him the thousand small miseries of life. The idea of work appeared to him as a horrid malediction; he resolved to get rid of it without delay. Providing himself with a rope, he climbed on a tree, and, after fastening it and passing round his neck, he threw himself into eternity. Fortunately for him, the lame was broken by the shock, and his body deposited upon the ground, where it was found by a charitable passer-by, who cut the rope, and, assisted by the police, took him to the station-house, where he could say nothing, except that drinking made him crazy. However, when completely sober, he thanked his star for having escaped so miraculously from death, and preserved carefully the rope, probably as a future warning from getting drunk again.

Drunkenness may also lead to kleptomania, this new excuse for fashionable people who are in the habit of supplying themselves with other people's property.

A man whose honesty was unspotted was no sooner drunk than he was stealing everything that came under his hands. As soon as the paroxysm was terminated, he felt ashamed of himself and restored the stolen goods. He was led to com-

mit suicide from the fact that he could not cure himself from this bad habit.*

Moral and Criminal Responsibility of Drunkards.—This is a question which has been the subject of the greatest contestations and variety of opinions. Aristotle, and after him Quintilianus, did not admit that drunkenness, even when so complete that liberty of action was abolished, was an excuse or even a cause of extenuation. Drunkenness, they said was a state of voluntary degradation, and one cannot find a means of justification in his own degradation. Drunkenness aggravates the crime instead of excusing it; and there is, then, a reason for applying two punishments, one for the offence and the other for the drunkenness. This opinion was accepted by jurists of the middle ages, when a citation was an argument, and was defended by Bartholes. In the statutes of Francis I., the offences committed in that condition were more severely punished. In England, as well as in this country, drunkenness is no excuse for crime, and Blackstone declares that it is rather a cause of aggravation. In Prussia and Bavaria, on the contrary, drunkenness is a cause of excuse (Briand and Chaudé). However, we see in the Prussian code that any one who, through gambling, drunkenness, or otherwise, is unable to support his family is sent to prison.†

The French Penal Code is silent on this point, and the discussion rolls upon the interpretation to be given to Art. 64, which declares, first, that there is neither crime nor offence where the accused was in a state of *dementia* at the time the deed was committed, and, after, that no crime or offence can be excused or the punishment mitigated except in cases of circumstances where the law declares the fact excusable, and allows an extenuation of the pain.

In regard to civil responsibility, authors are unanimous,

* Briere de Boismont, *loc. cit.*

† The criminal code of Maria Theresa admitted that the individual in a state of drunkenness was incapable of offence. The Austrian code says that involuntary drunkenness leading to criminal action destroys the judgment, and, of course, responsibility. It declares that drunkenness must be punished as transgression when one has committed an action which in another time should be considered as a crime.

and agree that drunkenness pushed to a certain degree engenders an incapacity; depriving temporarily the individual laboring under its influence from the faculty of making a contract, and that the nullity of an agreement passed in this condition must be granted. (Pothier, cited by Briand and Chaudé.)

Taylor says: "When the mind of a man is completely weakened by *habitual* drunkenness, then the law infers irresponsibility, unless it plainly appears that the person was at the time of the act, whether of a civil or of a criminal nature, endowed with full consciousness of what he was doing; and a court of equity will not interfere in other cases unless the drunkenness was the result of collusion by others for the purpose of fraud. When the drunkenness has occasioned a temporary loss of the reasoning powers, the party is incapable of giving a valid consent, and therefore cannot enter into a contract or agreement, for this implies *aggregatio mentium*, *i.e.* a mental assent of the parties. Partial drunkenness, therefore, provided the person knew what he was about, does not vitiate a contract or agreement into which he may have entered. Thus the law appéars to create two states in drunkenness: one, in which it has proceeded to but a slight extent, and it is considered that there is still a power of rational consent; another, in which it has proceeded so far that the person has no consciousness of the transaction, and, therefore, can give no rational consent. The proof of the existence of this last state would vitiate all the civil acts of a party." Upon the criminal question of responsibility the same author remarks: "When *homicide* is committed by a man in a state of *drunkenness*, this is held to be no excuse for the crime. If voluntarily induced, whatever may be its degree, it is not admitted as a ground of irresponsibility, even although the party might not have contemplated the crime when sober. Thus it appears that when the state of drunkenness is such that any civil act of the person would be void, he may still be held responsible for a crime like murder." *

* The English laws do not excuse. Whoever gets drunk voluntarily is responsible for the action committed in that condition, if even, when sober,

In the State of New York, we have a statute which places the property of habitual drunkards under the care of the court, in the same manner as that of lunatics. The overseers of the poor in each town may, when they discover any person to be a habitual drunkard, apply to the chancellor for the exercise of his power and jurisdiction. And certain cases, when the person considers himself aggrieved, may be investigated by six freeholders, as to whether or not he is actually what he is described to be, and their declaration is *prima facie* evidence of the fact. (Beck's "Med. Jur.")

Now, we must decline to accept the validity of such a law, that the testimony given by six freeholders is *prima facie* evidence of the fact in a medico-legal question. We have always opposed medical *expertism* given by laymen, and we do it now more than ever. So many blunders and illegal acts are caused daily by such experts that it is time they should be stopped. No question involving a medical question should be judged and its validity become incontestible except when given not only by a physician, but by a medical expert. Members of a jury, especially of a country jury, are, as a common thing, very incompetent in everything regarding medical matters, and no man is able to discuss or judge of a question he is totally ignorant of.

Far from being a pretext to extenuate the offence, drunkenness must, on the contrary, aggravate the circumstances. In fact, the perpetration of a crime is in most cases encouraged by it. Drunkenness has been the first offence which has led to a second one more criminal still, and the second offence is very often the consequence of the first. The man who gets drunk has often the idea of satisfying a passion, and only uses drunkenness as a cloak to conceal his premeditation. The records of criminal cases show that often murderers, incendiaries, and seducers get intoxicated before committing their crimes; and, as Taylor says, "It is obvious that,

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he could not have premeditated the crime. Drunkenness has no legal action; it neither extenuates nor increases the penalty attached to the transgression. (Guy.)

if drunkenness were to be readily admitted as a plea of irresponsibility, three-fourths of the whole of the crimes in this country would go unpunished. Sir E. Coke declares that: "As for a drunkard who is *voluntarius demon*, he hath no privilege thereby; but what hurt or ill soever he doeth, his drunkenness doth aggravate it." In our own day, Judge Parke, a very authoritative Crown judge, said to a jury: "I must also tell you, if a man makes himself voluntarily drunk, it is no excuse for any crime he may commit while he is so. He takes the consequences of his own voluntary act, or most crimes would go unpunished." Such opinions, of course, must vary a great deal according to whether the judge is a temperate man or the contrary.

The French laws do not make any mention of drunkenness. It is not admitted as a legal excuse: "There is neither crime nor offence where the accused was in a state of *dementia* at the time of the action." (*Code Pénal*, 64.) Attempts have been made to apply to drunkenness this disposition of the penal code. Dementia is a general expression designing all conditions in which consciousness, judgment, will, are suspended; it is mental alienation, permanent or temporary, primitive or secondary, a delirium as well as a mania. "Should we hesitate," says Tourdes ("Dict. Encycl. des. Sc. Med."), "to excuse the acts committed under the influence of typhoid fever, of poisoning by belladonna, by datura? Why, then, judge differently when it is a question of alcohol, which has identical effects upon conscience and will? Jurisprudence has always rejected this doctrine. Drunkenness is a voluntary action, a wicked one, disapproved by morals, and cannot constitute a legal excuse." "If the will of the legislator had been to place drunkenness upon the same level as dementia, and classify it among the excuses, he would have mentioned it as he mentioned dementia and provocation. His silence reveals his formal will to refuse that character to it." (Briand and Chaudé.) The question of drunkenness cannot be submitted to the jury. In 1808, the Court of Assizes of Cher, having put a question relative to drunkenness presented by the accused, the Court of Cassation disapproved, specifying

that drunkenness, being a voluntary and reprovable action, can never constitute an excuse acceptable by law and morals.

Such is French jurisprudence, which makes man responsible for crimes committed during drunkenness. We will now examine this doctrine in its medical aspect.

Drunkenness is a temporary dementia, destroying conscience and free-will. Responsibility and absence of moral liberty, are contradictory ideas. Such is the absolute principle. "Drunkenness," says Rossi, "when complete, destroys completely the conscience of good or evil, the faculty of reasoning; it is a sort of temporary dementia. The man who became intoxicated may be guilty of a great imprudence, but it is impossible to say, with justice, 'This crime you understood at the time it was committed by you.'"

The man who gets drunk must only be responsible for the imprudence he committed in getting drunk. To impute to him the actions he committed when he had lost his power of reasoning, is punishing as a crime a purely material action, abstraction being made of the guilty will of the agent. (Chevreau and F. Helis.) If the individual has lost all faculties of knowledge, judgment, and will, he becomes unable to dispose and contract. His actions can no more be imputed to him.

If in a general view this principle is not contestable, let us, however, confine it between some narrow limits, and indicate the circumstances ruling its application. It would be dangerous to give the character of a legal excuse to a fact reprovable in itself—to legitimate, so to speak, an immoral habit and prepare an excuse to all crimes. Drunkenness alters more or less our moral faculties; but the insane himself, in a certain measure, may be considered as responsible for his actions when they are committed during a lucid moment, and when the mental lesion is not very deep or specialized. The same appreciation, with still more right, is applied to the effects of alcoholism. We must not in such a matter admit any absolute doctrine. There are regarding drunkenness some cases of excuse or of extenuation, as well as there are cases where

responsibility remains entire or is even aggravated. This opinion is not contrary to law.

Some authors go still further. Dr. Steph. Rogers, in a paper read before this Society, says:* "The finding of a man drunk and absent from business, that he knows to be important, I should at once regard as evidence of the existence of methomania in his case;" and as "*methomania*," according to the same author, "*is a manifestation of brain disease*, and that brain disease involves generally impairment of mental faculties, and consequently a form of insanity, any man drunk and absent from business that he knows to be important, committing a crime in that condition, should be treated not as a criminal, but as a maniac.

Dr. Tyler, quoted by the same author, says: "An inebriate has a diseased brain. No will or agency of his can bring forth therefrom other than diseased mental and moral products. A person who is governed by an uncontrollable influence is not a responsible being, and should be so treated."

Now, as we have seen above, the drunkard is in some cases responsible and in others he is not; and, in fact, how can we condemn a man committing a crime against his will? In a criminal case, the question must be carefully examined; for, if the guilty party has had attacks of delirium tremens, if it is ascertained that he is a *dipsomaniac*, he ought to be confined in an asylum as any other insane; and no matter how well he may appear to be while confined, it is not till after a long time, probably ten years, before he can renounce spirits, or that he may be set at liberty without danger for himself and society. No matter how much he might promise, swear, that he will not "touch another glass," the inclination before that time is stronger than he. *He cannot resist it as long as he can procure it.*

The habit of getting drunk is as old as the world. It is a chronic evil, and a chronic evil as well as a chronic disease cannot be cured by quick-acting remedies. The symptoms may be amended, but before a cure can be effected, we must

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* *Quarterly Journal of Psychological Med.*, April, 1869

first combat the diathesis, and use slow-acting remedies as well as all the resources of hygiene.

When we want to treat a disease, we always try to find its cause. When this last is found, it is often an indication for the treatment.

Causes of Drunkenness.—Now, in ninety cases out of a hundred, drunkenness is first contracted by imitation and politeness; for it is considered very impolite by some individuals to refuse to drink when invited to *join in.* It soon becomes a habit, and then constitutes one of the most incurable diseases. Every additional glass is one more stitch in that other Nessus' tunic, called chronic alcoholism, from which, when once entangled in its folds, it is impossible to come out, and Hercules, like the drunkard, dies in the most wretched agony.

The disease is not even ended by his death, but its influence extends from generation to generation until extinction of his race. Morel * reports many examples of this fact. According to him, the sequence is as follows:

First generation: immorality, depravity, excess in the use of alcoholic liquors, moral debasement.

Second generation: hereditary drunkenness, paroxysms of mania, general paralysis.

Third generation: sobriety, hypochondria, melancholy, systematic ideas of being persecuted, homicidal tendency.

Fourth generation: intelligence slightly developed, first accession of mania at sixteen years of age, stupidity, subsequent idiocy, and probably extinction of the family.

Another cause rests principally in this country upon the bar-room system. There were in New York, on the 1st of last February (1871), 7,000 dram-shops or hotels paying license, under the Excise Law; and I was told by one of the officers of the department that there was at least an equal number of people selling liquor without license, which would make for the city of New York alone the enormous number of 14,000 drinking places, one for every 65 inhabitants.

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* "Traité des Dégénérescences physiques et morales de l'Espèce humaine"

The amount of revenue tax collected last year upon spirits and fermented liquors was nearly fifty-six million dollars, at a rate of fifty cents per gallon, making 23,000,000 gallons of native spirits only, whilst in 1868, when the tax was two dollars per gallon, it amounted only to nearly nineteen millions, making 9,500,000 gallons. We may thus judge of the increase in the use of spirits since the decrease of the tax; for, if in 1870 the tax had been at the same rate as in 1868, the amount would have been one hundred and sixty-eight millions instead of nineteen! Vice-President Colfax, in a recent lecture at Washington, said that the money spent by the people of the United States in drinking amounted to the fabulous sum of one thousand millions a year.

Messrs. Otis Clapp, John E. Tyler, and William B. Spooner, who were appointed commissioners to consider the expediency of establishing an asylum for inebriates in Massachusetts, have submitted a very interesting report to the Governor and Council of that State, which has been communicated to the Legislature. They estimate that there are 600,000 persons in the United States who have lost their power of self-control in the use of intoxicating liquors, and that in Massachusetts there are 23,000, of which number two per cent. die each year a drunkard's death. According to the report of the Board of Health of the city of New York for 1870, there were 307 deaths direct from intemperance; but, as I said in my last paper, those who die from some other disease caused by intemperance are credited to the disease and not to the cause. We must, however, be thankful to Dr. Charles P. Russel, Registrar of Records of Vital Statistics, who has begun for the year 1871 to take an accurate account of the deaths which are caused directly or indirectly by intemperance.* We do not wish to extend our remarks any longer

* The report has just reached us, and we find that in 1871 deaths from direct alcoholism amounted to 220. In 1872 they were 314. Deaths from delirium tremens, 102. Intemperance was certified as either the direct or complicating cause in altogether 826 cases—over two daily; 75 per cent. were in males.

upon the subject of statistics, which we have sufficiently developed in our last paper.*

Nor can we suggest a means of arresting the progress of intemperance in this country. We leave this task to legislators. The evil is known, and has been advocated by thousands better than I can do myself, only I must repeat with Magnus Huss: "Things have arrived to such a point that, if energetic means are not taken against such a fatal habit, the nation is threatened with incalculable evil. . . The danger to which is exposed the intellectual and physical health of Scandinavian [we might as well say American] populations is not one of those more or less probable eventualities. It is a present evil, whose ravages may be observed upon the present generation. . . It is no more time to back out before the means to be taken, should they even injure many interested parties. . . It is better to steal away from danger at any price than to be obliged to say it is too late."

As we have said above, one of the greatest causes of drunkenness is imitation; but what we must add is that imitation is in most part inherent to minors. It is most generally between the ages of seventeen and twenty-one that the habit is contracted. I asked, a short time ago, a youth of nineteen, who was in the habit of getting intoxicated, if he liked the taste of the liquor. He answered that he disliked it; and finally confessed that he was drinking to do like the others, and that among his friends he who drank the most was considered the smartest and most manly!

Now, the best means to cut short this human plague is to do away with the bar-room system, when, if bar-rooms are not met with in every block, the occasion of drinking will be less frequent, and the habit will be made less easily contracted; or, if this measure be found too rigid to begin with, let the number of drinking-places be limited, a heavier tax imposed

* "Report of Three Cases of Poisoning by Whiskey, with Remarks upon Alcoholism," *New York Med. Journal*, Dec., 1870. Reprinted in pamphlet form. D. Appleton & Co., New York.

upon them, and a sufficient bond furnished by the keepers of those establishments, who should be liable to a heavy fine for selling liquors to minors or to people already intoxicated.

By these means we should arrive soon to a decrease of this plague, which, if not soon stopped, will be the ruin of the country and a cause of degeneration of its population.

THE SPHERE, RIGHTS, AND OBLIGATIONS

OF

MEDICAL EXPERTS.

By JAMES J. O'DEA, M.D., of New York.*

Not much is known of the application of medical knowledge to the end of jurisprudence in the earliest historic times. The ancient Roman law-courts had a short and easy method of settling doubtful medico-legal points by referring them to the "authority of the learned Hippocrates." But under the imperial sway, when the study of jurisprudence underwent its wonderful development in the reigns of Justinian and his successors, a serious attention was attracted to the subject, and rules relating to its practical application were embodied in those famous compounds of state and judiciary law, the Pandects. Still, the actual beginning of the system, such as we now enjoy it, dates from so late as the commencement of the sixteenth century. In those days the experiment was not always attended by happy results, for, naturally enough, medical men shared in many of the ignorant beliefs of the times, and lent the force of their opinions to sustain them. But, notwithstanding this drawback, it soon gave promise of such good fruit that it was deemed necessary to frame a body of rules for the employment of medical witnesses, and for their guidance in the new duties assigned them. These rules

* Read before the Society, April 13, 1871.

are contained in the celebrated "*Constitutio Criminalis Carolina*," decreed by Charles V., Emperor of Germany, at the Diet of Ratisbon, in 1532. It is there ordained that medical practitioners shall be called to investigate all cases of death "by wounds, poisons, hanging, drowning, or the like; as well as cases of concealed pregnancy, procured abortion, child-murder," etc.* The numerous works on medical jurisprudence which succeeded the publication of this code amply attest the interest it awakened among the medical men of the day. About the first was a treatise by a German doctor, Johannes Bohn, on the subject of mortal wounds, entitled "*De Renunciatione Vulnerum*," published in 1689. The same author produced in 1704 a more comprehensive work, giving copious rules for the guidance of medical evidence in courts of law; and in Valentine's Pandects, the physicians of the day had, according to good authority, "a compendious retrospect of the opinions of preceding writers on juridical medicine." †

At first the right to testify in courts of law was restricted to surgeons. Two were appointed in every city and town to examine "all wounded or murdered persons," and to report the facts to the proper tribunal. But in 1692 physicians were included, and henceforth discharged similar duties. Such, at least, was the early progress of this novelty in Germany. The French adopted and improved upon the German institution. After the publication of the Caroline Code, Francis I. decreed that both "physicians and surgeons should be legally required" to act in a medico-legal capacity. Subsequently, Henry IV. conferred on his court physicians the privilege of nominating surgeons in every town "to the exclusive right of exercising this important duty." Finally, Louis XIV. decreed that physicians must always be present with surgeons at the examination of dead bodies.‡ A pleasing example of the authority of medical opinion with courts of in-

* Paris and Fonblanque, "Medical Jurisprudence," vol. 1, Introduction, pp. 9, 10.

† Ibid.

‡ Foderés, Traité de Méd. Leg., vol. i.

quiry, even in those days, is narrated by Pigray in his *Chirurgerie* (liv. 7, chap. 10, p. 445). It appears that seven men and seven women were sentenced to death for sorcery, and that M. Pigray, with three professional associates, was appointed to visit the condemned in company with the court counselors, to investigate the truth of the charges contained in the written deposition made against them. The result of the inquiry was a recommendation to the court to remove the sentence of death, and to place the fourteen prisoners, whom they disovered to be lunatics, under medical treatment, and we are told the court was wise enough to follow the advice. The progress of opinion was slower in England, for we read that, more than a quarter of a century after the occurrence just mentioned, Sir Thomas Browne, author of the fascinating book "*Religio Medici*," bore "testimony to the reality of diabolical delusions, occasioning by his evidence the conviction and condemnation of two unfortunate persons, who were tried at Bury St. Edmonds, before the Lord Chief Justice Baron Sir Matthew Hale, on the capital charge of bewitching the children of a Mr. Pacey, and causing them to have fits." * But this was in the reign of James I., whose obsequious Parliament enacted a law against witches, in the preparation of which men even such as Coke and Bacon took an active part. It was not until the *furore* had spent itself in the execution of some forty thousand men, women, and children that the persecution was finally stopped by the efforts of Chief Justice Holt. Among the last to suffer death in England were two women, executed on the grave charge of having, the devil willing, raised a hurricane by making a lather of soap and pulling off their stockings. But I must ask pardon for this digression.

Undoubtedly, American physicians are among the most industrious laborers in the field of medico-legal research. So early in the history of the republic as 1810, Dr. Rush drew attention to the subject in an introductory lecture delivered

* Paris and Fonblanque, p. 28.

before the University of Pennsylvania, dwelling on the value of medical testimony as an aid in the vindication of oppressed innocence and the punishment of crime. Since then the whole field of medical jurisprudence has been traversed in numerous American works of recognized ability and authority. I need only mention those of Beck, of Wharton and Stillé, and two valuable productions on medical evidence to which I am much indebted in the preparation of this paper, Dr. Elwell's "Malpractice and Medical Evidence," of which the third edition, revised and enlarged, is recently published, and the excellent treatise on the "Jurisprudence of Medicine," by Prof. Ordronaux.

I.

The word *expert* means, etymologically, "taught by use, practice, or experience." It therefore denotes one who has a practical knowledge of some science or art. Now, in the case of the medical expert this practical knowledge is only of sterling value to the cause of justice when reared on a solid basis of scientific training. This fact our law courts do not seem sufficiently to recognize, and it is precisely because they do not recognize it that the question "What constitutes a medical expert?" receives even at this day conflicting answers. Thus, while in some cases (as in Page *v.* Parker, 40 N. H., 47) it was ruled that, in questions of skill or science, mere opportunity for observation was not enough, it being necessary that the witness should have superior skill and scientific knowledge, and also a mastery of the subject; in others (e. g., in N. Orleans & Co. *v.* Allbritton, 38 Miss., 242) it has been held that practising physicians without medical diploma or license from an examining board stand on an equal footing in this respect with the most thoroughly-educated medical men. And in the Livingston case it was the judicial decision "that any practising physician is competent to express an opinion as an expert on a medical question."*

* Ordronaux: "Jurisprudence of Medicine."

A medical expert, properly so called, is one specially qualified to give opinions on facts having a medical nature and bearing. Of course, this definition will exclude all who, though recognized as physicians by the amended statute, are not legitimate members of the profession. Moreover, it will discriminate between members of the profession itself, and with propriety, I think, for, apart from the fact that some physicians are, by reason of certain advantages of training and observation, more entitled to the position of experts than others, there is no doubt that the interests of justice and the reputation of our cloth require some classification of medical witnesses more in accordance with facts and experience. Presuming this to be true, I may classify them :

A. As physicians and surgeons. This might answer, though still imperfectly, in countries where medical and surgical practice are conducted separately. But where such is not the custom, it is open to the serious objection of not being in accordance with fact.

B. As medical witnesses and medical-expert witnesses. This is not only the most natural but also the most widely applicable division, being based on a real difference in the character of medical testimony ; and, although not generally recognized in our courts of law, it certainly, if unconsciously, influences the weight which judge and jury attach to separate medical testimonies. Let me be permitted to show the nature of this important distinction. *Medical witnesses* testify to familiar medical facts, and deliver opinions based on that knowledge of the general principles of medicine which all medical men should have. The value of their testimony will therefore depend on the range of their general medical information and experience, and not necessarily on a minute acquaintance with some special medical branch. On the other hand, *medical-expert witnesses* testify to special medical facts, and deliver opinions on a more or less minute and exhaustive study and experience of some particular medical subject to which they have devoted special care and attention. As an illustration of my meaning to those to whom it is not already sufficiently obvious, suppose an investigation

into an alleged murder by strychnia, and medical men summoned to give testimony. He who has a knowledge of the effects of strychnia, and of its obvious properties, will testify to these. He will state that it is white, intensely bitter, a valuable medicine in proper doses, a powerful poison in overdoses. And he will tell how much an overdose is, how it causes death, and what diseased appearances it leaves on the body. But if he were required to extract strychnia from this body, to prove by chemical tests this substance to be nothing but strychnia, and to explain the comparative merits of these tests, he might decline by acknowledging his special inability. The court would have to seek the opinion of an expert in toxicology, who in turn would testify with authority on this branch, from having a special knowledge of it. The former of these would be a *medical witness*, the latter a *medical-expert witness*.

There is no doubt, I believe, as to the reality of this distinction, nor as to the importance of its full recognition in courts of law. One of the reasons of the dissatisfaction expressed, now and then, in regard to medical testimony, is the unreasonable anticipation of its performance, leading to the common injustice of expecting an exact and minute knowledge on all medical topics from all medical witnesses. Next to slander, unreasonable expectation is the greatest foe to character. How prevalent is the false notion that physicians have an intuitive knowledge of their profession—like poets, are born, not made—and that "he is no doctor," as it is said, who can't give a solution of any medical question that may be sprung upon him! Nor will this habit of thought excite surprise if we remember how it is kept alive by a certain class of medical practitioners who feign a mysterious knowledge of the healing art. These are the quacks of whom Dr. Parr said, that "they endeavor to obtain confidence by pompous pretenses, mean insinuations, and indirect promises." I would press this classification on the attention of legal men in the hope that it may have some weight in influencing the expectations they may in future form of medical witnesses.

Sometimes, as the following example will show, exceptional circumstances have rendered this classification impracticable. In the State of Iowa one Hinkle was tried for poisoning his wife with strychnia (6 Iowa R., 380, quoted from Elwell's "Malpractice," etc.). Two physicians stated in evidence that they had never tested for poisons, though they understood the principles of chemistry, and had seen tests applied by chemists. An exception taken to the admissibility of their evidence was overruled on the ground that "to say that none shall be permitted to give their opinions, except those who have given their lives to chemical experiments, or those of the highest professional skill, would, in this country at least, render it impossible in most cases to find the requisite skill and ability." In reflecting on this decision, it is but fair to remember that it was influenced by necessity. Still, in a trial involving so much of last consequence to the accused, a successful effort might have been made to procure elsewhere the services of a medical expert. Even the "highest professional skill" is compatible with comparative ignorance of some special medical subject, and I cannot but think it hazardous to admit the testimony of such witnesses to be conclusive on a question of chemistry and toxicology.

Experts are called to explain to a jury the meaning of certain facts which might not otherwise be known. Most trials involve some such facts, and are inconclusive without assistance from expert testimony.

The expert testimony of medical men is the most important of all, for it requires a most minute, varied, and extended knowledge; it frequently relates to subjects of an intricate and recondite character; it is applied to the settlement of questions affecting the three great interests which men most love, namely, life, reputation, and property.

Two examples will illustrate its great value. The first is an instance of a crime discovered, and of the criminal punished, by the instrumentality of medical science, after all ordinary means had completely failed.

In the year 1821 a woman disappeared mysteriously from the city of Paris. A suspicion that she was murdered led to

the arrest of several suspected persons, who, however, were soon liberated, owing to want of proof of their guilt. After eleven years the remains of an unknown corpse were exhumed in one of the city gardens. They were examined by Orfila, Chevallier, and other famous experts, with the result of identifying them with the published description of the murdered woman, and the rearrest and conviction of the previously discharged criminals.

The second illustrates how an innocent man was, perhaps, saved from an ignominious death, at least freed from a crushing imputation, by the intervention of the same species of testimony.

Thomas Bowman was accused of murdering an illegitimate child by piercing its head with an awl. The skull was produced in the coroner's court, the hole was plainly visible by all the jury. There was no doubt about the case, and the accused was held to stand his trial for willful murder. The grand jury sitting in Exeter, England, examined the facts and were about to bring in a true bill, when Mr. Seldon, a noted surgeon of the neighborhood, heard what was going on. Suspecting some great mistake, he appeared before the jury and asked to see the skull. Perceiving at a glance that the hole was only a natural opening for the transit of a vein, he lost no time in so demonstrating it to the satisfaction of the jury, who, thereupon, procured the honorable discharge of the accused.

The *Quarterly Journal of Foreign Medicine and Surgery*, in alluding to the importance of the medico-legal functions, says: "It is such duties ably performed that raise our profession to an exalted rank in the eyes of the world; that cause the vulgar, who are ever ready to exclaim against the inutility of medicine, to marvel at the mysterious power by which an atom of arsenic, mingled amid a mass of confused ingesta, can still be detected. It does more: it impresses on the minds of assassins, who resort to poison, a salutary dread of the great impossibility of escaping discovery."

II.

The sphere of the medical expert is practically coextensive with civil and criminal jurisprudence; but, as it would be impossible within the limits of this paper to do even scanty justice to the subjects thus embraced, I must confine myself to some remarks on his evidence as delivered in a court of law.

Expert testimony begins where ordinary testimony ends. Ordinary witnesses testify to facts of which they are personally cognizant. Their opinions are not usually of any value. But it is otherwise with the expert witness. He does much more than bear testimony of facts, for he delivers opinions not only on those he has himself observed, but also on such as ordinary witnesses may have stated on oath. His method of procedure is like this: he observes facts, or listens to their recital, in doing which he weighs and classifies them, and, after their due examination, rises to a conception of the general principle of which they are the expression. The stating of this conception in appropriate language constitutes the delivery of an opinion. It hence follows that his function is judicial as well as testamentary, for he interprets the meaning of certain medical facts just as the judge on the bench decides the law. His position on the witness-stand is therefore exceptional *quoad* his testimony. Such is the dignified character of his office, but necessarily it has limits, and with these it is his duty to be acquainted. "He should," writes Prof. Ordronaux, "understand at the outset that he is not called to express any opinion on the merits of the case; that he has no proper concern in its issue, and, by whichever party called, he is in no wise the witness, much less the advocate, of that side. . . . His duties are properly limited to gauging the value of certain facts as they appear in evidence—facts whose importance to the issue cannot be determined without his assistance."

The fact, then, that medical testimony chiefly consists of reasoned opinions on statements made in evidence, and the

necessity of limiting the expression of opinion within definite bounds, have led to the institution of certain rules by which it is to be guided. The majority of these rules are scattered throughout an almost endless succession of law reports, and are nearly inaccessible to all but students at law. I will just mention a few, at the same time directing those who wish to see references to some of the latest, to the appendix of Dr. Elwell's work on "Malpractice and Medical Evidence."

A medical witness is not allowed to express an opinion on facts requiring no special knowledge for their comprehension.

He is not allowed to base an opinion on the opinion of another expert.

His opinion should be formed on a personal examination, not on the report of another physician. At first sight it may seem inconsistent that he should be asked an opinion on facts reported by common witnesses, but debarred from giving one if based on the statements of qualified men. But the discrimination is due, no doubt, to the statement of the common witness being rendered under oath.

It has been ruled—and this corroborates what I have lately said regarding the importance of putting in practice a certain classification of medical testimony—that a medical witness is not competent to deliver an opinion on insanity unless he has had experience in the treatment of this disease. The wisdom of this decision will be obvious to all who appreciate the many and great difficulties which beset the diagnosis of some forms of insanity.

"A medical witness may, when the issue is sanity or insanity, be asked whether such and such appearances, proved by other witnesses, are, in his judgment, *symptoms* of insanity; but he cannot be asked if the act with which the defendant is charged is an insane act; for this is a fact to be decided by the jury."

The expert must be confined in the expression of opinion to the subject on which he has special knowledge.

As time passes and many things remain to be said, I must beg you to be content with this very meager outline of the

sphere of medical testimony, and to permit me to pass immediately to the second part of my subject—the rights of the medical expert.

First of these in order is his right to compensation for his labor and opinion. This is generally conceded by courts of law, on the common-sense ground, I suppose, that as his time and opinion are his capital, no one has a right to use them without returning interest. The opposite view implies the doctrines of communism to that extent. But, though conceded by the courts, there is a popular prejudice against it, and it is commonly objected to medical men that they are actuated by mercenary motives in requiring compensation for their testimony. Adopting the prevalent fallacy, *post hoc ergo propter hoc*, they who make this charge have inferred, from the fact that medical men do receive money for their testimony, the opinion that therefore they sell their testimony for money. The charge would be a very serious one if true. But, in my opinion, it could not be wider of the truth. I don't believe money is the prize which medical men seek in ascending the witness-stand. Nor, to take lower ground, do I think the ordinary compensation sufficient of itself to tempt any wise member of the profession to undergo the slow torture of a trial and "the law's delays." The desire of fame may indeed influence some, though, I think, not many, and these perhaps only once in a lifetime, or until they cease to be novices to the situation. I really believe, despite the cynical sneer which the announcement may cause among "dollar-getters," that the motives actuating medical experts who enter upon the position are love of scientific investigation, sense of moral duty, and zeal for truth and fair play. But, waiving this paltry objection aside, is there any sound reason why medical experts should not be paid for the labor, time, and trouble, they take in aiding judicial investigations? Let me dismiss the subject by a quotation from a manly letter addressed by Dr. Hammond to the *N. Y. Tribune* of May 24, 1870. "While," he wrote, "I hold it to be my duty as a good citizen to testify at any sacrifice to *facts*, my opinions are my own, and I will not give them, unless I please, with-

out a remuneration in some degree commensurate with the time and labor spent in their elaboration." It only remains for me to say that the fee should be stipulated for before the opinion is given or the cross-examination begins, for, once it is allowed to pass into the *res gestæ* of the trial without this proviso, the witness ceases to have any right of property over it.

The medical expert has a right to the courtesy of counsel. Sometimes, I fear it must be said, counsel shows him little consideration. A certain degree of hostile criticism is usually to be expected from lawyers in the interests of their clients, but it is too often carried beyond the bounds of moderation. It may insure a lawyer's triumph to belittle the expert in the opinion of the court, or it may conduce to the success of his cause, but there are other and more honorable means of securing these short of assailing a physician's reputation. We may indeed find a reason for the latitude allowed to lawyers in this particular, in the following words from Chief-Justice Earle, of the English bench: "The law trusts the advocate with a privilege in respect to the liberty of speech which is in practice bounded by his own sense of duty;" for "he may have to speak upon subjects concerning the deepest interests of social life, and the innermost feelings of the soul." But that this liberty is limited, if not by the patience of the court, at least by moral considerations, is a truism on which it would be waste of time to dwell. It is a nice point in casuistry to determine how far a lawyer may go before overstepping the limits of his extended and even elastic privileges. But this much is certain, that, even before he reaches the imposed limit which debars him from aspersing the character of a witness, he may trench on dangerous ground, as, for instance, when, in his address to the jury, he so mistakes or distorts the medical evidence as to make it appear other than what it is. Examples of such unfairness have fallen within the experience of most medical men who have appeared in the capacity of witnesses. They are far from being excusable on the ground that the lawyer is not bound by the oath of the witness to speak the truth, because his relations to his client

neither absolve him from the higher law nor from respect to healthy public opinion. I may further remark that the heat engendered by a closely-contested case may palliate, if it does not excuse, the faults of lawyers now under consideration, but there is no such apology for the conduct of judges who allow scientific testimony to be indecorously handled. They seem prone to forget that the process of "brow-beating," to which medical witnesses have to submit, often defeats the very object of judicial investigations. This view may be supplemented by some remarks on the difficulties natural to the position of the medical witness, which I find so well put in Paris and Fonblanque's "Medical Jurisprudence" that I shall not apologize for giving them in their own words: "A scientific witness fully acquainted with the subject in dispute, and by particular knowledge well qualified to inform the court on the most important points, is too frequently rendered miserable in himself and absolutely ineffective to the ends of justice by the diffidence which a man of real acquirement generally feels when impressed at once by the novelty of his situation . . . . the importance of the duty which he is about to perform, and the consciousness that the truths he is about to utter may be obscured, suppressed, or perverted by technicalities for which he is unprepared with any defense. . . . We do not mean to arraign the present forms of examination in general when we assert that some abuse in practice too frequently places the medical witness in as painful a situation as if he were himself a criminal." I, on the contrary, believe that the "present forms of examination" may very justly be arraigned, and that they are susceptible of improvement. Now, let me hasten to state my conviction that the number of lawyers who abuse their privilege is few as compared with the many who do not. I have entered my protest against the length to which some go, and all, perhaps, think they have a right to go; but, this much being said in the kindliest spirit to our legal friends (I wish some lawyer would arise in this assembly and point out the deficiencies in the conduct of medical men viewed from the stand-point of his profession), I will now add my belief that medical witnesses

are treated, as a rule, with high consideration by counsel, and that, very properly, the more important and influential they are the greater is the deference paid to them. This, I repeat, is very proper, but I must beg them to keep a corner in their hearts—a cynic might say a corner in their pockets, it being a popular error that lawyers have no hearts—for the humbler, though perhaps equally worthy, members of my profession. There is, let me say, a tendency to pay exclusive deference to those whose reputations have impressed us with feelings of respect and reverence. We often pride ourselves on a sort of intimacy with people whose names are spoken with admiration in the public places, though we may have had no personal intercourse with them. We are all, indeed, lawyers as well as others, given to undue reverence for authority. And so it happens that exclusive and, I had almost said, obsequious deference is paid to Professors A. and B. because they are the major lights of their profession; so much so, that if a scientific man who has put his light under a bushel, but who also may be just as competent, is induced to confront the opinions of these others, we are tempted to conceive a contempt of his mental calibre and to regard him as one of the too numerous conceited individuals who "rush in where angels fear to tread." Well, who will affirm that counsel is exempt from this same failing; and does it not explain why medical witnesses who, though able and learned, may not have had their talents trumpeted abroad, meet sometimes so little consideration at their hands? This is a petty grievance to be sure, but it deserves a remedy, and this I think is to be found in more intimate intercourse between the members of the two professions. For, lawyers and physicians cannot long associate together without great mutual benefit, and without discovering much latent ability requiring only the stimulus of contact to be quickened into life. But intercourse should not be confined to these meetings. The leading members of this association would confer no small boon on both professions by encouraging that social communion among them which is the cement of all good understanding and friendship. The benefits of such an intercourse, full, free,

and untrammeled by the forms of our society reunions, would flow out on all sides, increasing the amenities of life, and otherwise contributing to the general benefit.

The medical witness is entitled to have questions put to him in a clear, intelligible form. The unintelligibility of many of these is a subject of surprise and comment among medical men. They complain that they often betray such a want of precision that the medical witness is puzzled how to make sense out of them. The reason seems to me obvious enough. It is almost as difficult to put a sensible and precise question as to frame a guarded answer. Both acts require an intimate knowledge of the subject on which the examination is to be conducted, based on a systematic preliminary training in its elementary principles. It is not reasonable to expect that men, however intellectual and studious, can supply deficiencies in this respect by a few weeks', or even months', cramming for a trial. Indeed, the real wonder is that counsel succeed so well, considering all the disadvantages under which they labor. In pointing out these things to our legal friends I am quite sure we have no intention of assuming airs in their presence. Such pretension would indeed be very absurd, for there are points of culture in which the advantage is conspicuously on the side of the legal profession. I might, instance the faculties of argument and expression—of dialectic, in a word—arts in which medical men are usually deficient, but which are the necessary qualifications of the lawyer. Various remedies might be suggested for this defect of questioning, the most effectual of which I will, however, reserve for a future part of this paper. But for the present I will mention, as a good empirical reform, the employment of medical men to assist in preparing the medical parts of lawyers' briefs.

The right to use memoranda, conceded to all witnesses, is particularly necessary to medical men whose investigations are frequently of a nature too complex to be accurately reproduced without them. It is one of the wonders about the human mental constitution that impressions, fading in the excitement of engrossing occupations, are so quickly resusci-

tated by artificial aids. One of the most effectual of these is a written document, which, though not received by courts as a substitute for memory, is permitted as an aid to recall the past. It is immaterial whether the memoranda are made by the witness himself or to his dictation, by an assistant, provided they be taken at or soon after the investigation, for with each succeeding day's delay their reliability is more and more weakened. In drawing up memoranda we cannot be too exact in attending to facts and dates. These require to be recorded with scrupulous accuracy. As regards facts they should be conscientiously set down as they appear; and too many precautions cannot be taken against the besetting error of mixing them up with inferences. The golden rule would seem to be to state the facts first and the inferences last; to state the facts fully and the inferences cautiously.

IV.

All obligations of the medical expert, which I will next consider, are divisible under three chief heads: 1. His obligations to courts of law; 2. To medical science; 3. To his professional brethren. The last of these will form a heading for some general observations on the duties of medical men toward those of their profession who are defendants in suits for malpractice. The three will be considered in the order now stated:

1. *His Obligations to Courts of Law.*—In many cases requiring legal investigation the coroner's court is the first before which a medical witness is summoned. The laws of this State "make it the duty of coroners to summon a medical witness," to be present at inquests. "And it shall be the duty of every coroner to cause some surgeon or physician to be subpœnaed as a witness upon the taking such inquest," says the statute (vol. iii. p. 1036, "Revised Statutes of New York"). It declares that physicians so summoned shall be liable to the same penalties if they refuse to attend as are provided in other courts, and yet, by an extraordinary omission, it affirms nothing in regard to their compensation. Now, though it

may be a little out of place, I must observe that, for consistency's sake alone, their labor should be compensated here as in other courts. The character of the service is precisely the same. That its remuneration should be a recognized thing in one and not in the other court is, to say the least, evidence of a very unsatisfactory state of the law on the subject. A more just and rational provision is made in the British possessions, though by no means an adequate one. But, at all events, it has the merit of greater consistency. There medical witnesses receive from town or county a fee of five dollars for expert testimony given before a coroner's court, and ten dollars if required to make a *post-mortem* examination. I fear time will not permit me to enter into details regarding the physician's duties at coroner's inquests. I must content myself with referring to Taylor's and Beck's manuals for most that is required to be known on the subject. Suffice it to remark here that he should be very circumspect of the opinion he gives at the inquest, both on account of its paramount influence with the coroner's jury, who look to it sometimes for sole direction, and of the severe criticism it must undergo in the higher courts.

The question, whether a medical man can be compelled to appear in court as a skilled witness against his will, comes next in this section. The general opinion is in the affirmative, though, as we shall see there is not unanimity among the judicial decisions on the subject. I speak of skilled witnesses, because only in reference to such has any doubt existed, all citizens being obliged to give evidence in courts of law as ordinary witnesses. The usual mode of summons is by subpœna, which is a positive command obliging obedience under pain of certain specified penalties. It was indeed held at one time that this command was binding on ordinary witnesses only; that medical experts being, as it were, extraordinary witnesses, could not or should not be compelled to attend court against their will. This, in fact, was the opinion of Lord Campbell in Betts *vs.* Clifford, Warwick Assizes (quoted in Taylor's "Medical Jurisprudence"). He held that a "scientific witness was not bound to attend upon

being served with a subpœna, and he ought not to be subpœnaed. If the witness knew any question of fact he might be compelled to attend, but could not be compelled to give his attendance to speak to matters of opinion." Prof. Ordronaux, in a foot-note to his able work on the "Jurisprudence of Medicine," suggests that Lord Campbell's language could not have been accurately reported, because, "in the first place, it has never been admitted to be within the discretion of any person to disobey the subpœna of a court within whose jurisdiction he may chance to be. . . . In the second place, even if told the purpose of his examination, he can exercise no choice in the matter of his attendance, unless he could show that he was neither a competent or ordinary witness, nor an expert; but, as he can never know this absolutely in advance, it is certainly made his duty to obey the subpœna." Although this is not merely the most likely but the only logical view of the matter, being also what our law-courts would generally assent to, yet I find the old opinion reaffirmed by Mr. Justice Sprague, of the United States District Court. The question was as to the right of said court to compel the attendance of an interpreter who had disobeyed a subpœna. After stating that on a former occasion he had refused "to issue process of arrest in such cases," he proceeded to say: "When a person has knowledge of any fact pertinent to an issue to be tried, he may be compelled to attend as a witness. In this all stand upon equal ground. But to compel a person to attend merely because he is accomplished in a particular science, art, or profession, would subject the individual to be called upon in every case in which any question in his department of knowledge is to be solved." (*In re* Kœlker, 1 Sprague Dec., 276, rom Appendix to Elwell's "Malpractice and Medical Evidence.") Thus unsettled stands the question. We may say of the controversy upon this question what Curran remarked about an indefinite speech, that "it begins at a point and goes on widening and widening until it fairly puts the question out altogether." In this as in other circumstances, however, we will find prudence the better part of valor. It will be at least expedient for us to obey

the summons, even though issued by so indulgent a judge as Mr. Justice Sprague.

2. *His Obligations to Medical Science.*—The medical expert in a court of law occupies the distinguished and responsible position of representative and exponent of the most advanced ideas and most recent improvements in medical knowledge. It is hence requisite that he be well learned not only in the fundamental branches of medical science, but also in the latest researches and most improved methods of investigation. This proposition is so obvious and reasonable that the bare statement of it should suffice. But something further is requisite to constitute what is, in the broad sense of the term, a good witness, and a fit representative of the medical science of the day. If this knowledge is to be made effectual it must be assisted by two important acquisitions, namely, by powers of observation and by faculties of reasoning correctly on the facts observed. To these must be added an amount of practical experience sufficient to enable him to bring this knowledge to bear on the points under investigation. According to the degree of proficiency in these things will the reputation and usefulness of the medical witness be affected for good or evil, and hence they deserve to be seriously considered.

Medical men—in matters relating to the sick, such quick observers—are, when summoned to act in an unusual capacity, like people generally, liable to overlook valuable facts. This defect, of which we are all more or less conscious, is partly occasioned, I think, by undue concentration of the mental faculties upon purely professional subjects. The mind absorbed in this one pursuit is not free to receive new impressions; or it becomes imprisoned in its own conceits, and a narrow, pedantic character is the result. Part of the defect is also due to neglect of discipline and self-culture. But by far the greatest portion is the result, I feel convinced, of the educational system pursued in our medical schools. With the great defects of that system, as a whole, I have not now to do. The remarks which I am about to make relate immediately to that department of it called medical jurisprudence.

Still, let me say, on the general question, that I am wholly in accord with those medical reformers who urge upon our attention the advantages of giving this system much more of a practical character. I think they are entitled to our gratitude for pointing out its incompetency to fit medical men for the ever-widening circle of duties imposed upon them by the exigencies of modern society. If we were to judge by the system they so loudly condemn, we would be forced to believe that physicians and surgeons have no other duties apart from writing prescriptions and setting broken bones, for it unaccountably neglects that essential practical instruction which they should have as a necessary preparation for the important functions they may be called upon to discharge to the State in view of an exacting and critical public. As a particular instance of this defect, let me point to the practice of confining tuition in medical jurisprudence to dry theoretical disquisitions, given at the fag-end of a curriculum, and offered as a substitute for the practical instruction which is of far greater value. How nearly fruitless these lectures are, the experience of every student who has been schooled in the art of acquiring knowledge under difficulties will tell him. I do not think I exaggerate the defects of this kind of instruction, when I say that of the numbers of aspiring young men annually turned out by our medical colleges, ninety-five per cent. have no practical knowledge of legal medicine; hardly one, if brought face to face with an accidental death or wounding, would know how to apply the meager theoretical knowledge he has received from his lectures and his text-book; hardly one would make a respectable display of what he does know if asked to perform an autopsy or give a statement to a coroner's jury.

We pride ourselves, and to a certain extent justly, on the superiority of our institutions of learning; but in all that relates to the practical application of skill, and particularly medical skill, to the service of the State, we are, I really believe, far behind what some of us might choose to call "the effete monarchies" of Europe. Let me instance, as an example of what we might profitably imitate, the school of legal

medicine attached to the University of Berlin, wherein each student who desires receives practical instruction in medical jurisprudence, enjoying opportunities of examining the living, of making autopsies, of analyzing poisons, of essaying the right methods of applying various tests, such as those required to ascertain the modes of death of infants—in a word, of putting to practical use the discourses heard in the lecture-room. The Austrian system, if I am correctly informed, is, or was, equally good, and the French, though deteriorated within the last fifty years, and now much more defective than need be, is still better than any either England or America can lay claim to. Many stanch supporters of the constitutional freedom and institutions of Britain have deplored her deficiencies in this respect. Dr. Gordon Smith, for example, in the course of his work entitled the "Analysis of Medical Evidence," earnestly insists on the necessity for a law demanding more special qualifications for medical witnesses, accompanying, however, his recommendations with a pardonable strain of national glorification. "Though," he writes, "one of the last of his countrymen who would wish to see the customs and institutions of Great Britain shaped according to foreign patterns, we might take a hint from and improve upon their practice." Truly, and we also in America, overlooking this appeal to national prejudices, may take a hint from, and at least, *try* to "improve upon, their practice." That there is ample room for improvement is evident from this one fact, that we are to this day nearly as deficient as the English were three-fourths of a century ago, when even John Hunter had to deplore to his class his want of sufficient medico-legal training, accusing himself of incompetency at the trial of Sir Theodosius Boughton. It is mere folly to expect that, because a youth has gone successfully through the ordinary medical curriculum, he will be fitted to discharge the important duties of a witness in a court of law. For, though his professional learning is essential to him here as elsewhere, yet the demands of the position are so exceptional—have so much to do with applied science and a knowledge of circumstances which do not occur in his routine experience—that a

training over and above what is purely medical is necessary to him. I will venture to assert as much of the legal profession, for I think that, had they the advantages of this practical education, we would hear at least fewer complaints from medical men respecting their defective method of examining medical experts. But, to be valuable, the education must be unmistakably practical or experimental. Among those who see and lament the great defects of our present system of medico-legal tuition, the impression prevails that its proper remedy will be found in the more universal establishment of chairs of medical jurisprudence in our medical colleges. Now, though this proposition is undoubtedly good, though it cannot be questioned that such chairs are of great value and worthy your esteem, I will not allow that they are the sole and sufficient remedy for the evil complained of. I believe nothing will do short of a real, practical school of legal medicine, alive to the medico-legal issues of the day, with its morgue, its laboratory, its appliances, its medical and law libraries, its physicians to teach the fundamental branches of medicine, and its lawyers to expound the elementary principles of jurisprudence. We know how valuable such a course of instruction would be to ourselves; and if, as Sir Edward Coke has said, "Some knowledge of every science and art is not only useful but even necessary" to lawyers, we can estimate the essential service it would be to them. Consider, again, the value of such a school of legal medicine in the instruction of public functionaries such as coroners, and in fitting them for the duties of their important office. No reasonable man can doubt the advantages which would accrue to the whole community if all candidates for the coronership were required to have a good grounding in the essential principles of law and medicine. It is a conviction with many whose judgments are entitled to great respect, that coroners should be medical men; and, taking things in the chaotic state in which we find them, there ought to be no doubt about the truth and propriety of this assertion. Certainly, in the present total absence of instruction for laymen in the important duties of the coroner's office, medical men are the

only persons at all competent to fill the position. Under our present system—if system it is worthy of being called—coroners do not understand their duties, and consequently they do not fulfill them. This is no novel complaint, for, though seldom spoken openly or where it can awaken serious thoughts among the masses, it is often repeated from mouth to mouth. Still it has been publicly ventilated. Among others I may mention Dr. Semmes as having called attention to it in a report to the American Medical Association, pointing out the slovenly manner in which inquests are conducted in the United States; charging that they are hastily gone through, incomplete and valueless, and that the action of juries in loosely inspecting the dead is "scarcely a formal compliance with the law." Dr. Beck, also, in his work on medical jurisprudence, declares, "That the duties of this office are imperfectly understood, and often most negligently performed, hardly admits of a doubt. The individuals appointed are frequently unfit for the situation, both from habit and education, while the jury are too commonly desirous of hurrying through the investigation."

It is not to be supposed that the scheme of education here advocated would cure all the evils of our coroners' courts, of which there is so much complaint, for many are no doubt the result of abuses which slowly adhere to all institutions, as barnacles gather round the good ship's bottom; but it would remedy some of the most flagrant of them, and contribute largely toward increasing the efficiency of this branch of our criminal service.

The necessity of this special training being conceded, there are other qualifications necessary to medical experts, concerning which a few words may be spoken. There are two minor distinctions among medical men considered as possible expert witnesses, one based on acquired, the other on innate qualities. The first is the full result of the special education we have just been considering; the last comes from the possession of distinctive natural powers. This insures a well-conducted witness, that one who is well-informed. It is difficult to define what the innate peculiarities are, but they

help to make much of the difference between even well-instructed medical men, when they appear on the witness stand; for, I may remark in passing, not all even well-versed medical men pass successfully through the forms of an examination in this place. It is one thing to be a sound practitioner, and quite another to be a good expert witness, because the kind of knowledge necessary to make a good witness is special over and above what is required for a good practitioner. These innate or natural peculiarities are due to temperament and habit of mental discipline. The temperament of some men is such that, despite accurate information, they are failures on the witness-stand, by reason of an unconquerable nervousness the moment they encounter counsel in a cross-examination. Others lack the logical faculty of drawing proper inferences from facts, and again others lose presence of mind altogether.

From all that I have now stated on this important branch of the subject it may be inferred that the following qualities are necessary in a good medical witness, namely, a thorough practical training, the logical faculty, and a well-balanced temperament.

The medical witness thus equipped has various important duties to perform. The questions on which he is called to pronounce "are vast and unlimited in their range, and many of them soundless in their depths." He owes it to the cause of justice above all else to thoroughly inform himself on all the points of the case submitted to him. This means that he should avail himself of all the steps for arriving at the truth. What these steps are will depend on the nature of the inquiry, but it is of great importance to the interests committed to him that, before using them, he should have divested his mind of all prepossessions respecting the merits or complexion of the case submitted to him. This is avowedly difficult, for the following reasons: First, the prevailing practice of the daily journals, who prejudge the merits of cases, and who, wittingly or unwittingly, pervade the public mind with a bias derived from reading their opinions. When a case of unusual interest occurs, the journals take sides, and

fight over again, with much effusion of ink, mimic wars of the Guelphs and Ghibellines. Medical men are just as liable to be influenced by what they read in these journals as other people, and it will therefore not be out of place to caution those who are employed as experts to forego the discussion until the trial is over, or they have examined the facts on which their evidence is to be based.

Second, the habit of hasty inference so common even among well-instructed members of the community. It is often verified by observation that those who jump to hasty conclusions are generally most blindly obstinate in adheriug to them, either from inherent narrowness of mind, or from aversion to acknowledge an error of judgment. I need not indicate how much all this is incompatible with the duties of a medical expert. We all feel it to be of the last importance that every medico-legal case should be approached with minds free from prejudgments, that it should be allowed to stamp its own impress upon us, that the facts should be observed and examined in their true light; for these are the crude ore out of which subsequent thought and study must produce the pure coin of expert opinion fit to pass current in a court of law. In this stage of the inquiry, the expert can follow no better guide than the following general rules taught by Descartes in his "Discourse on the Right Method of conducting the Reason:"

1. "Never to accept anything for true which you do not clearly know to be such; that is to say, carefully avoid precipitancy and prejudice, and comprise nothing more in your judgment than what is presented to your mind so clearly and distinctly as to exclude all ground of doubt.

2. "Divide each of the difficulties under examination into as many parts as possible, and as might be necessary for its adequate solution.

3. "Conduct your thoughts in such order that, by commencing with objects the simplest and easiest to know, you may ascend by little and little, and, as it were, step by step, to the knowledge of the more complex; assigning in thought a certain order even to those objects which, in

their own nature, do not stand in a relation of antecedent and sequence."

Lastly, in every case make enumerations so complete, and reviews so general, that you may be assured that nothing was omitted.

The delivery of an opinion is the proper function of a medical expert in a court of law. Yet he is not allowed to be judge of the facts on which his opinion is asked. If a sick man came into your office and stated to you a number of symptoms which he alleged to be facts, but at the same time debarred you from verifying by the proper methods of investigation, requiring you to base on them an opinion as to the nature of his disease, your dilemma would be of the same species as that of the medical expert in a court of law, with the sole chief exception that in the court all witnesses are under the obligation of an oath. I think I know what course you would take in the case of the office consultation. You would refuse to base an opinion or prescribe a course of treatment on facts the truth of which you were not permitted to judge for yourself. Yet this is just what a court of law will not allow the expert. He must take facts as they are stated to him. "For him to pronounce an opinion," says Prof. Ordronaux, "either upon the truth of the facts given him for interpretation, or upon the merits of the case, would be to usurp the province of court, advocate, and witness." And the same authority further states that this rule is not adopted with the intention of diminishing the value of medical evidence, but to prevent experts from usurping a power "which they might be tempted to use for the benefit solely of the party calling them." This last expression in reference to the tendency of expert witnesses—a tendency by no means, however, peculiar to them—to assume a partisan attitude, leads me to the point which I argued in a paper I had the honor to read to this Society a year ago. On that occasion, when treating of expert-evidence in criminal trials involving the plea of insanity, I dwelt at some length on the same question, and pointed out that this tendency was in great measure due to the prevailing, and, as I think, defective custom of calling such witnesses. I suggested as the proper remedy that the

court alone should call and examine the medical experts, a suggestion which I am pleased to find sustained by the weighty authority of Prof. Ordronaux, although I must, at the same time, say he throws doubt on its practicability. "It would be better," he writes, "were it possible, for the court alone to examine experts upon those points on which their professional opinions are needed, rather than to hand them over to counsel, each of whom has an interest in making their testimony aid his own side, and to that extent forcibly impressing upon it a unilateral character" ("Jurisprudence of Medicine," p. 123). It is very proper to say to the medical expert, You must come to the discharge of your duty with a mind nearly if not absolutely free from prejudice; you must allow neither interest nor pride, nor jealousy, nor party-feeling, to influence you; you must stand on neutral ground, neither leaning to one side nor to the other, and deliver your opinion, whatever it may be, solely on the merits of the facts, wholly irrespective of its consequences. No one will question the propriety of this advice, but few can help knowing how much it sounds like a mockery. Because, should his mind escape the bias to which it is exposed, from causes already stated, before he gets to court, and should he succeed in coming on the witness-stand without prepossessions in favor of one side or other, the fact of his being called to do duty for one party, taken with the efforts of counsel to lead or force him in a desired direction, must unavoidably get him into the very trap he is so loudly warned to avoid. And this very testimony, which we are told must be delivered in the interest of no other cause but truth—how is it handled by the opposing counsel? Does he respect its neutrality? Does he not rather try with all his might of dialectic to bend it to the cause for which he contends, or, failing here, does he not beat it down and belittle it in the opinion of the jury? What, now, is the fate of your independent medical expert? Does he fare any better than if he were a partisan? Is he not, like Issachar, crouching down between two burdens? Of two things one is true: either the present mode of examining experts is very faulty, or all the talk about the necessity of lofty dignity and absolute

impartiality is "sound, and nothing else." Now, whatever may be thought of the practice of our courts in this respect, we must all heartily wish that such noble sentiments will always actuate and guide the medical expert. Appreciating, as I have no doubt we do, the contradictory requirements of the situation, we know that it would be a much greater public misfortune should medical witnesses abandon these lofty principles, than that the impartial spirit of medical testimony should be outraged by partisan zeal. And, until a change is made which will give the court the sole right of calling and examining the medical witness, we must e'en bear our lot with what equanimity we can.

In the formation of opinion it is well to be on guard against the vitiating effect of certain fallacies. In the preparation of evidence we are liable to fallacies of inspection, or *a priori* fallacies, by which are meant those consequent on forming an opinion hastily, and without seeking sufficient evidence of its truth. I will take as an example of this kind of fallacy a passage from the testimony of a celebrated surgeon of this city delivered at the trial of Walsh *v.* Sayre. Being called, this gentleman testified that he had examined the child, Margaret Sarah Walsh, more particularly her hip joint, *i. e.*, "the posterior aspect of the hip, called the gluteal region." The examination proceeded as follows:

Q. Well, did you examine any discharge of fluid that was coming from the orifice; was your attention attracted by that?

A. Yes, my attention was attracted by a discharge coming from the orifice.

Q. Was your attention attracted to the particular character of the discharge?

A. Yes.

Q. Well, what was it, to the best of your recollection?

A. It was a glairy fluid, slightly colored.

Q. I need hardly ask you the question—you are acquainted with the synovial fluid, the character and appearance of the synovial fluid?

A. Yes.

Q. In your judgment, did you find any synovial fluid discharging from that orifice?

A. It struck me so that it was.

Q. Did you examine it at all?

A. I examined it with my fingers, and looked at its general tenacity, color, etc.

Q. Was that the opinion you formed at the time, as well as you remember?

A. Yes.

Q. Did you state that opinion at the time?

A. I think it is very likely I did.—(*Alleged Malpractice Suit of* Walsh *v.* Sayre, p. 134. Shaw & Co., New York, 1870.)

The hasty impression snatched from the two facts—the hole in the gluteal region, and the "glairy fluid, slightly colored" issuing therefrom—was unadvisedly delivered as an opinion, or delivered as an opinion without necessary confirmation from further evidence. This is one of the fallacies of observation named non-observation, or the omission of facts which are material to the inquiry. It partakes also of the nature of mal-observation, which is the confounding of "a perception with a rapid inference, or the mingling up of inferences with facts" (Bain's "Logic," vol. i., p. 37). Great caution should always be exercised in the formation of an opinion. This is a lesson not easy to learn. The sanguine, hasty disposition is naturally liable to overleap the details which to the wary are the necessary steps to a conclusion. Hasty inference and hasty action are by no means infrequent, owing to a hurried, slovenly way of thinking, impatient of the work on which an opinion entitled to consideration must be based.

The proper method of forming an opinion falls under that part of logic called analysis and synthesis. It comprehends the details to which I have alluded, and some more, of which the habit of abstraction is one of the most useful. By abstraction is meant the separation and separate consideration of the qualities of a body or the terms of a proposition. It is a habit of great value in preventing confusion of thought, and in enabling the mind "to concentrate its powers on the one

subject of study at the time." * Of equal importance to the witness is the "analyzing function of the syllogism." This is the happy faculty of making explicit in the statement what is implied in the thought (Hamilton's "Logic"), the use of which, in the language of Mr. Mill, is "to make us aware when something that claims to be a single proposition really consists of several, which, not being involved in one another, require to be separated, and to be considered each by itself, before we admit the compound assertion" (Mill's "Logic").

Finally, all who are asked to express a deliberate opinion may profit by calling to mind the very pregnant remark of Plato, that "opinion is at its best but a mean between knowledge and ignorance."

Before quitting this part of the subject, allow me to make a few observations on the differences between legal and medical definitions of diseases and injuries. Necessarily these definitions are dissimilar, owing to the different objects or intentions contemplated by law and medicine respectively; the object or intention of law being to settle the bearing of these states on life, liberty, and property, while that of medicine is to facilitate diagnosis, classification, and treatment. As an example, let us take the term *wounds*. In medical science a wound is "a solution of continuity of the skin occasioned by external violence;" in law it means "any lesion of the body, whether cuts, bruises, contusions, fractures, dislocations, or burns." † In surgical works wounds are classified as incised, contused, and lacerated. But legal authorities divide them into "slight, dangerous, and mortal," terms which are obviously here used in their relation to the possible or probable contingencies of deformity or death. Thus, a slight wound, in the legal meaning, is one neither dangerous to life, nor likely to leave a deformity; a dangerous wound may do either, and a mortal wound is one fatal to life. This distinction is of importance to the medical expert, for, in delivering an opinion on the nature of a wound, he should be

* Bain, "Logic," vol. i., pp. 338, 339.

† Wharton's "Law Lexicon."

prepared to meet the legal as well as the medical requirements of the interrogatory. This is a circumstance which gives undoubted advantage to the cross-examiner, and affords him an opportunity of puzzling the medical witness. In their mode of putting such questions, however, counsel often display a happy unconsciousness of the difficulty and even impossibility of answering them, though they demand a direct and positive answer. It seems to be a prevailing impression with them that the site alone of the wound governs its mortality; that all wounds of the head or chest, for instance, are mortal. The question is often put thus: "Are wounds of the head mortal? answer me, yes or no." Now, it is evident to the merest tyro in medicine that no such answer can be given, because the mortality of a wound depends on other circumstances than its mere site, namely, on its character, extent, depth, and on its involving vital parts. But, I fancy I hear a disputatious lawyer exclaim, "What! is not the head a vital part? You are surely talking nonsense." Well, here is the answer. The integrity of a man's scalp is not necessary to his life, as my outraged legal friend may discover for himself by trailing the tail of his coat on the Plains. But, to scalp a man is certainly to wound his head; therefore all wounds of the head are not mortal. Some are, others are not; anyway, it is impossible to give the answer demanded by the question just cited.

The same difficulty presents itself in many of the questions put about diseased states. A medical expert is sometimes asked to define insanity. Now, to define a disease is to select some essential character which will be true of it in all its varying phases and circumstances. If insanity presented any such constant condition, a definition could certainly be framed which would stand for the abstract notion of it. The modified states of these characters found in various phases of insanity would stand for definitions of these phases. But a definition of insanity is impossible, because it presents no such condition. The truth is, however, that definition and description are often improperly used synonymously. When a medical witness is asked to define insanity, the intention

is to have him describe it, and then the proper return question of the medical expert is, What kind of insanity do you wish described? While on this subject I may remark that there is a strange diversity of opinion among legal men as to the practical value of expert testimony in trials involving the question of insanity. According to some, the courts are chiefly guided by medical experts; according to others, expert evidence, instead of elucidating the subject, only involves it in greater mystery. An English judge is reported to have expressed himself as follows on the subject: "His experience taught him that there were very few cases of insanity in which any good came from the examination of medical men. Their evidence sometimes adorned a case, and gave rise to very agreeable and interesting scientific discussions; but, after all, it had little or no weight with the jury." It is also complained that, in such trials the medical evidence is too freely dashed with metaphysics. Now, with respect to the first of these charges, I may remark that legal men seem altogether to lose sight of the important fact that legal ideas about insanity are formulated, or at least stereotyped, which the medical are not nor can be. Medical views are undergoing progressive modifications to admit new experience of the nature and bearings of this disease. And, with respect to the second, I must in candor say that, granting its correctness, the mistake it complains of is often chargeable to the besetting tendency of courts of law to drift into a sea of metaphysical discussion, and to pay undue attention to the theoretical side of questions of insanity. We may trace this failing through the deprecatory remarks of the English judge just quoted, especially where he states that the evidence of experts in insanity "sometimes adorned a case, and gave rise to very interesting scientific discussions." These words exactly interpret the weakness to which men of education are prone when they catch a scientist. They look upon him as a *rara avis*, with whom they are glad to attempt a few intellectual flights by way of innocent diversion. The trial is, in a measure, suspended, that the court may enjoy the luxury of "an interesting scientific discussion." During this interlude the lawyers

rest from the fatigues of a hotly-contested combat, the jury draw a long breath of relief, the judge leans calmly back in his chair, a pleasing, drowsy lull steals over the wearied court, and, in the general suspense, all eyes turn with pleasing anticipation to the rising luminary. When the *séance* is ended, the refreshed court applies itself with new vigor to the knotty question of the hour.

Judging by incidents frequently occurring all over the country, the plea of insanity would seem to be one of the most *recherché* morsels which it is possible for lawyers to enjoy. Certainly they have far transcended the zeal of the medical profession in their efforts for the extension of its boundaries. What has attracted their special favor is the plea of moral insanity, a vague disorder, whose outlines are yet indistinct, if not shadowy. Nevertheless, the legal profession experience no difficulty in detecting it in almost every man whose crime is of a startling character. Is a man clutched by the law after a life of successful villainy, or does he commit a murder under the governing influence of passions pampered for years, or is he a bigamist, he will find counsel ready to establish his insanity. And so it goes on until, finally, insane impulse will be the accepted cloak for crime, and the little moral resentment or indignation against wrong-doing that survives will die out from among this indifferent, self-seeking generation.

There is danger lest the medical profession become inoculated with the loose *dilettanti* notions of the day on this subject, and so be swept away with the popular current. It is a failing with educated men that they often give indiscreet adhesion to new-fangled notions. The ignorant do not; their want of intellectual unrest or earnestness leaving them to hug the old and traditional. But lovers of progress have this weakness, that, like the Athenians of old, they are ever running after something new. No doubt the temptation to overdo the plea is very great both for lawyers and physicians—for lawyers, because insanity is a plausible, an imposing defence; for physicians, because it is a truly captivating study, both in itself and by reason of its close affiliation to metaphysics, in

turn, a branch of learning dear to many of the most gifted sons of men. But beware of hobbies, for the time may come when the use of the plea will be confounded with its abuse, and both condemned together.

Finally, I will briefly consider some of the duties of medical men to each other, as witnesses and otherwise, in trials for malpractice. Allow me to introduce the subject by a hurried sketch of the legal nature of the business relation between physician and patient.

Prof. Ordronaux, in the able work I have already many times quoted, and for reference to which I am indebted to the kindness of the President, states that "the character of a professional service is that of a mandate, and the obligations incurred under it, when no special contract has been entered into by the parties, belong to that class termed in the civil law *quasi ex contractu*." In Wharton's "Lexicon," a mandate is defined to be "a judicial command, charge, or commission," having as necessary qualities, 1. Some object of the contract, *i. e.*, "some act or business to be done;" 2. That this act or business should "be to be done gratuitously;" 3. That the contract should be voluntary. Certain obligations were created on both sides by the mandate; on the side of the professional (mandatory): 1. "An obligation to do the act; 2. To do it diligently; 3. To render an account of his doings to the mandator. On the part of the mandator to reimburse the mandatory for all expenses and charges incurred in the execution of the mandate." I will pass over any further allusion to the mandatory character of the service, and merely content myself with calling your attention to what seems to be an error in the classification of the obligation—Prof. Ordronaux and Mr. Wharton placing it among *quasi* contracts, which they state to be implied contracts, while Mr. Maine, at p. 332 of his celebrated work on "Ancient Law," declares this to be an error: "For," he writes, "implied contracts are true contracts, which *quasi* contracts are not." The question may seem to have only a speculative or historical interest, but in reality it has more, because if the relation between physician and patient be that of *quasi* contract only, which according to

the highest authority of the day means no contract at all, it can have no definite legal obligations. If there be really the distinction between the terms as pointed out by Mr. Maine, I should prefer classifying professional contracts under the heading predicated by the word implied. And it is easy to trace in the early history of medicine, in Rome, the origin of this relation between physician and patient. The well-to-do class of the Roman people entertained a strong aversion to the physicians of their day who practiced for money, as shown, among other evidences, by Cato's rudeness to the Greek physicians practicing in the city, and his urgent admonitions to his son to avoid them and the study of their art. Actuated by this aversion, which was mainly born of distrust, they discarded the services of qualified men, and relied chiefly on prescriptions contained in such books as the "Commentarius," or on the empirical skill of trustworthy slaves or freedmen. Now, as, by the Roman law, slaves and freedmen (when these latter were not citizens) were excluded from all civil rights, being "only subject and liable to duties" (Austin's "Jurisprudence," vol. ii., p. 741), they were debarred from entering into contracts, though they would doubtless always receive an *honorarium* for their services in so important a matter as the preservation of health. And, from always receiving the *honorarium*, they would come at last to have an implied right to it; thus the service being done, the *honorarium* would follow as its implied condition. The idea of the implied obligation of professional services passed into English common law —which we know to be chiefly derived from Roman civil law, first filtered through canon law—and has lasted there even to the present time, two thousand and more years after the circumstances originating it have ceased to possess a living meaning. And to this day no member of the Royal College of Physicians can sue for his fees. But, in our country, this, like many more of the lifeless traditions of the past, has never been resuscitated. "Whatever," said Chancellor Walworth, "may be the practice of other countries . . . the principle never has been adopted in this State, that the professions of physicians and counselors are merely honorary, and that

they are not of right entitled to demand and receive a fair compensation for their services." *

The physician or surgeon who undertakes the treatment of a diseased person has the following duties to fulfill: 1. He shall exercise *ordinary* skill and diligence; 2. He shall devote *ordinary* care and attention. You will remark the recurrence of the expletive "ordinary" in both of these injunctions. It gives an important interpretation to the meaning of the law. It is plain from the language of commentators that the meaning is not common *unlearned* skill, but ordinary *professional* skill—namely, that average skill which results from having the necessary degree of professional knowledge. And again, it does not mean the ordinary skill of the great lights of the medical art, but that which is displayed in the practice and deemed necessary in the judgment of medical men generally. Such is the meaning of the expression as applied to the general body of the profession; but for specialists, for those who claim a higher degree of knowledge and skill in their department than most other physicians, being employed on that account, and charging higher fees for their services, it has a particular meaning. It then signifies extraordinary skill by comparison with the ordinary skill of the profession, which is equivalent to ordinary skill as compared with the prevailing standard of skill among specialists.

Now, as skill implies the possession of knowledge, so the remaining requirements of the law have reference to the application of this knowledge. It is not alone required that the physician should display ordinary skill, he must also use ordinary care and diligence. The term ordinary, as a predicate of care and diligence, has the same force here as when it is used in reference to skill; which is to say, it means that degree of care and diligence which is displayed in the practice, and deemed necessary by the collective judgment of medical practitioners. But further, it also means care and diligence proportionate to the difficulty or danger of the case. It is important to bear this last interpretation in mind, as

* Ordronaux, "Jurisprudence of Medicine," p. 39.

teaching us how fully courts of law are alive to the fact that severe cases require one degree of ordinary skill and judgment, mild cases another; that what is ordinary skill in some cases is defective skill in others; that, in a word, the physician is to exercise skill, care, and diligence, in proportion to the gravity of the circumstances of each case. Besides the three qualities just mentioned, the medical practitioner is required to use his judgment as to the best means of effecting a cure. We all know that the end of medicine and surgery is the cure of diseases and injuries, but we sometimes forget that this end may be attained by different means, just as two travelers setting out from one starting point may reach a given city by distinct roads. Nearly every physician and surgeon has experience of some particular and favorite method of attaining this end. There is not necessarily any uniformity among them in this respect, nor, in the interest of progress, is it desirable there should be. A return to the prohibitory laws of Egypt, which obliged practitioners to conform to the stereotyped rules written in the books of Hermes under penalty of capital punishment, would be a movement too reactionary for even the most conservative of the present day. It is merely enjoined on the practitioner that he shall use his judgment in selecting proper means for effecting the cure of his patient.

At one time it was held that, if the practitioner escaped an indictment for gross negligence, he could not be judged guilty of malpractice. But, in reference to this interpretation, Judge Story remarked that there is no legal meaning attached to such an expression as "gross negligence," which could be made good in practice, and that the distinction it is said to denote is "utterly repudiated by the late civil law reports."

I believe there are few, if any, members of the community more conscientious or disinterested in the discharge of their duties than medical practitioners. Liable to be called at any moment to the most complicated case, and expected to be prompt and decided in the application of necessary skill, their movements are suspiciously watched by critical eyes, and

their words treasured up, it may be for the day of wrath, by attentive ears. Bearing the whole burden of a great responsibility in a serious case, they must often contend singly against its difficulties incidental as well as natural, sometimes without hope of reward if they succeed, but generally sure of unsparing condemnation if they fail. They who are familiar with this state of facts, and with the obstinacy, perversity, and ignorance of many to whom the services are rendered, cannot but feel a lively sympathy with the medical practitioner. But, when to this is added the lawsuit entered against him, maybe by the very person whom in his heart he felt he had most befriended—the sting from the serpent he had eased of suffering or saved from death—his case appeals loudly not only for the moral support of the community, but equally for the material aid of his profession. Putting aside the loud boasters, the selfish, inconsiderate, and even ignorant men to be found in the profession, whose conduct may sometimes deserve the infliction of a lawsuit, I do not hesitate to assert that a very large proportion of actions for malpractice brought against medical practitioners are instigated by unworthy motives. Some, indeed, go further, asserting that were the secret of such cases known it would unveil the promptings of malevolent professional rivals. This may be true, although I prefer to think not to the extent asserted. I have no doubt many lawsuits are unintentionally originated, or at least encouraged by the indiscreet or inconsiderate judgments which medical men are too much in the habit of passing on the conduct and treatment of their professional *confrères* in presence of lay people. It is impossible to exercise too much caution in expressing opinions on the character of the professional services of a brother practitioner. Ten chances to one the listeners will misunderstand you, will take your condemnatory words without the qualifications with which you accompany them, will magnify their meaning and add to their substance, until a damaging and irritating grievance is built up against the intended medical victim. The rule of the consulting physician should be *audi alteram partem*, and in all his dealings with men of his own cloth—and

of all cloths, for that matter—to exercise more of that charity of which St. Paul speaks as thinking no evil. Besides, simple reflection should remind him how puerile it must be to accept as conclusive the statement of a patient or his friends, ignorant as they must be of the nature of the disease, of the difficulties attending its treatment, and who, in eagerness to establish their case, suppress those facts in their own conduct which would effectually tell against them. Recently I was asked my opinion on the result of treatment a former patient had undergone for a fractured collar-bone. Union had taken place, but the broken ends could be easily felt, and even plainly seen projecting beneath the skin, for they were overriding to the extent of fully an inch. To all appearances this was the most careless or the most ignorant surgery, and seemed, *prima facie*, to justify the threat of damages which he held dangling, like the sword of Damocles, over the head of his medical attendant. But, on sifting the facts, I found the result wholly attributable to himself. It appeared that several times during treatment he became intoxicated, tore the appliances off, and escaped from the control of his medical adviser and friends. Now, if I had inconsiderately given an opinion of this case, if I had condemned its treatment, another might have been added to the long list of vexatious and ruinous suits brought against members of the medical profession.

It is said that nine-tenths of the suits for malpractice are founded on the treatment of fractures, amputations, and dislocations; and the habit of bringing them is increasing so much that honest and capable surgeons have seriously debated the necessity of retiring from a profession whose emoluments are so scanty in comparison with its risks, and in which the hard-earned reputation of almost a lifetime may be demolished in a day. I cannot altogether acquit the legal profession of some share in the production of this feeling of insecurity among medical practitioners. It is their duty, of course, to hear the complaints of their clients, but they should see to it that these complaints are justified by the facts, and they should acquire sufficient knowledge of these facts to

enable them to judge whether, even if true, they justify an action which may entail such lamentable results. Have they such knowledge? I fear not. I fear they share to some extent, to too great an extent indeed, the popular error that whatever deformity results from a fracture is the fault of the surgeon. I think they are not sufficiently aware of the differences in the nature and termination of fractures; that, in their nature, they are simple and compound; that simple fractures are transverse or oblique; that *oblique fractures are the rule, transverse fractures the exception;* that the transverse get well without deformity, provided the patient obeys instructions, but that the oblique and compound almost invariably, and in spite of the most admirable surgery, leave shortening or other disfigurement; consequently, that most fractures only unite at the expense of the length or shapeliness of the limb. These, with other facts of a like character, have been established by Prof. Hamilton, of this city, who proved, by the results of investigations conducted in a rare and exemplary spirit of candor and impartiality, that, "in fractures of the tibia and fibula, both compound and simple, perfect results are in the proportion of only one to about three of the cases treated; and, in fractures of the femur and clavicle, complete cure results in about one case in five; in fractures of the patella, a perfect cure happens only in one case in six." Is it not time for the legal profession to have a knowledge of these facts? Is it not a reasonable hope that, with this knowledge in their possession, they will, even apart from moral considerations, lend the weight of their great influence to discountenance ruinous and vexatious conspiracies against medical practitioners?

At the Eleventh Annual Meeting of the Ohio State Medical Society, held in 1856, the question of suits for malpractice was discussed, and it was asked, "What course shall the profession take in regard to the matter?" "Severe implications," it was said, "are being meted out to our professional brethren on account of imperfections, resident, not in themselves, but in their art." And it was suggested as a remedy, that there should be among the profession a distinct under-

standing and general consent that brethren going through such suits are entitled to the "sympathy and assistance of as many of their professional" *confrères* "as may be necessary to sustain them," and that "if avoidable, no member of the profession should give his services to the prosecution." I willingly acknowledge the goodness of this advice, but at the same time I must say it has but little force, nor is it applicable to any emergency. It is too vague; it has too much the air of a compromise. Further, it seems to ignore the fact that there are unprincipled, self-seeking men in the hierarchy as well as in the rank and file of the medical profession. So long as this remains a sad truth, which will be as long as human nature is unregenerated, it will be vain to appeal to the "sympathy and assistance of as many professional brethren as may be necessary," etc. There must be some means uncontrolled by sympathy or other transient feeling; some certainty on which the surgeon can rely in that trying hour when he must face round, and fight singly in a cause which is vital to his whole profession. That something is a *professional fund of national extent, to which all qualified medical men in the United States should be called upon to contribute*, and which should be used solely for the purpose of defraying the legal expenses of such suits and of paying some at least of the damages inflicted. I cannot enter now into the details of this scheme, though at a future time I may be permitted to do so; suffice it for the present to say that it would be necessary to restrict such aid to those cases only wherein, in the opinion of a medical council duly appointed, it should be proved by careful examination of the evidence that the defendant had suffered unmerited punishment.

THE LEGITIMATE INFLUENCE OF EPILEPSY

UPON

CRIMINAL RESPONSIBILITY.

By MEREDITH CLYMER, M. D.*

There is great unanimity in the testimony of writers on epilepsy, that it exercises, in its lesser as well as in its more classical form, a pernicious influence on the mental faculties of its victims. I believe that in every case of epilepsy there is some modification of mental tone.

That the existence of this malady is compatible with extraordinary intellectual power is not to be denied. I have myself known many examples, and there are several familiar stock cases cited by authors, the most remarkable being those of Cæsar, Mahomet, and Napoleon Bonaparte. The imperial biographer of the great Roman captain denies that the two nervous attacks which he had, one at Cordova and the other at Thapsus, were fits of genuine falling sickness. There is no real proof that the first Napoleon was subject to epilepsy, whilst there is much to discredit it. But where genius and epilepsy have co-existed, there have been always, so far as my knowledge and experience go, a nervous constitution, eccentricities of thought and ways, and which, sooner or later, have developed into some form of mental disease. The late Professor Trousseau said, in one of his lectures on

* Read by invitation before the Society, May 11, 1871.

this subject,—"If there have been epileptics who, in spite of more or less frequent attacks, have retained to the end of even a pretty long career, not only the perfectness of their reason, but also the full force of their intellect, and like those men of genius, whose names history has handed down to us, preserved that superior intelligence which enabled them to rise above the ordinary level of their fellow-men, instances of this kind are too exceptional to invalidate in the least the general law. In the large majority of cases, although in the beginning and when the attacks are infrequent, the patients are in the full possession of all their faculties; although a marvelous aptitude for conceiving things quickly, or viewing them under their most brilliant and poetical aspects, may distinguish some of them, yet in proportion as the fits recur and increase in frequency, in proportion as the disease progresses, the faculties fail, and become gradually extinct, and insanity follows."

Children, who in after life become epileptic, are often remarkable examples of precocious cleverness; they are bright, quick, full of imagination, and have astonishing memories, but are apt to be shy, tetchy, quick in quarrel, and liable to sudden gusts of temper. These unnatural gifts too are not lasting; the promise of the child is not fulfilled; he becomes stupid, morose, fearful, and blustering. The early cerebral exaltation is the evidence of the morbid germ which later is to be known by its fruit.

Of 339 epileptics, Esquirol found 269, or four-fifths, with some form of mental disorder, leaving only one-fifth in the enjoyment of their reason, and he exclaims, "What sort of reason?" The celebrated French alienist, Falret, observes: "It is certain that very many cases of epilepsy are accompanied by some disorder of the intellect which has a decided analogy to that met with in a large number of the chronic diseases of the brain. This trouble is as natural a consequence of the principal disease as those partial paralytic attacks so frequent after epileptic fits, and should not be separated from the affection on which it depends. We have cases of mental derangement accompanied by epileptic vertigo, or genuine

convulsive attacks; which are chiefly characterized by their short duration, intermittent type, outrageous exhibitions of passion, and by hebetude and want of memory after the paroxysms; cases so distinctive in their character as to warrant the name of epileptic insanity.

In most instances an uneasy, depressed, and irritable state of the mind immediately precedes an attack, and there is constantly some disturbance of the affective and intellectual faculties manifest directly after it, which may persist during a large part or the whole of the interval between the fits. The affective faculties chiefly suffer. The disposition is apt to be moody, suspicious, wayward, spiteful, and wrathful. Offense is readily taken; there is a fancy to tease and annoy, and to be troublesome; and a dread of insult or injury. The moral qualities are perverted, and the sense of propriety, decency, and duty obscured or lost.

The physical derangements to which the epileptic is liable are exhibited under varied expressions. In many cases there is gradual failure of intelligence ending in total mental annihilation; others show anomalies of character and disposition which hardly go beyond harmless eccentricities of conduct, or at most, involve a change of temper and habits; in some there may be an extreme perversion of affective life, and occasional explosions of automatic temper-fits, in which he loses the knowledge of himself, but is generally content to unpack his mind in words—

> ——— tantum maledicit utrique, vocando
> Hanc, Furiam; hunc, aliud, jussit quod splendida bilis;

or there may be those terrible outbursts of maniacal fury, accompanied by homicidal or suicidal impulses, or both.

We must admit, too, that epilepsy may be manifested, at least for a while, by some mental disorder alone, constituting the *masked epilepsy* of Morel, and for which I prefer the term *psychical epilepsy*.

These psychical perturbations are characterized by sudden and irresistible impulses often of the most dangerous character, and their disposition to manifest themselves in convulsive action is curious and interesting. They are distinctive in

their character, and are, sometimes, the only objective indication of the disorder. Though of so much importance to the psychologist and medical-jurist, they have not received the attention they merit, but little notice being taken of them by the majority of authors, whilst a few have made them the object of particular study.

Maudsley well remarks: It is not so clearly understood that the mental derangement so occurring may have the form of profound moral disturbance with homicidal propensity without manifest intellectual arrangement. This writer points out the frequency of these precursory phenomena in children who subsequently become epileptic. He says, children three or four years old are sometimes seized with sudden fits of shrieking, desperate stubbornness, or furious rage, in which they bite, tear, and destroy whatever they can lay hold on; these may occur periodically, and may either pass in the course of a few months into developed epilepsy, or alternate with epileptiform attacks, representing a vicarious epilepsy.

From the large number of cases, personal and collected, of which I have notes, I shall select a few, for the purpose of illustrating the several varieties of mental disturbance to which epileptics are liable. It should be borne in mind that the morbid psychical phenomena of which I am treating may happen before, at the time, or immediately after, the epileptic seizure; that they frequently replace it, and may be manifest only so long as the regular fits are absent.

Marc mentions a case of vicarious epilepsy in a peasant, twenty-seven years of age, who had been subject to epilepsy since he was eight years old. At twenty-five, the convulsive attacks ceased, and he then began to have irresistible homicidal impulses. Often for days before he felt the warnings of a coming access, when he would beg to be confined, that he might be prevented from committing a crime. "When the feeling comes over me," he would say, "I must kill some one, if only a child."

In the commune of Cravent, Loiret, France, lived the family Piednoir, consisting of a man and his wife, sexagenarians, and their son, aged twenty-seven, an epileptic. Except

some extravagant ideas, the young man had shown no signs of mental derangement, and had always been affectionate towards his parents. On Easter Sunday, he had had three epileptic seizures; that night he suddenly, and as quietly as possible, got out of bed, armed himself with some weapon at hand, and going to his mother, who slept in the same room with him, killed her with a single blow. He then went into the adjoining room, where his father was asleep, and killed him too. He next attempted to force his way into the adjoining house, but its inmate made her escape, and by her cries aroused the neighbors, who, coming to her aid, tried to secure the murderer, but he eluded them, and proceeded to the house of a brother-in-law, a mile or two off, where he remained awhile, but made no mention of his deed. He returned home, barricaded himself in the house, and was only finally secured by a ruse. After he had become quiet, he confessed his crimes, the manner of their perpetration, etc.

A lady, forty-eight years old, had had two attacks, accompanied by violent acts and threatening language, at intervals of eighteen months. For some time after her admission to Dr. Morel's asylum he was quite undecided as to the state of this patient's mind, she was so calm, rational, and industrious. There was not the slightest evidence of any mental disturbance. One day, however, she suddenly began to use threatening language, and very soon followed the menace by an overt act of violence, and it became necessary to shut her up. So violent was this attack of rage that she was no longer recognizable, and it was impossible to believe that it was the same woman who, only the evening before, was considered a model of gentleness and good behavior. After some days she resumed her duties with her usual willingness and good-humor. Other attacks followed; the fits became more frequent, and after a while her character began to change, and during the lucid intervals she was apt to be irritable and easily provoked.

At the meeting last summer of the Association of Medical Superintendents of American Institutions of the Insane, Dr. John P. Gray, of Utica, mentioned the following case:

A man was tried for the murder of his wife. The plea of

insanity was put in, but the counsel having given their entire attention to the fact of insanity, and little or none to the question of epilepsy, the evidence presented did not warrant the experts in considering the case one of insanity or irresponsibility. During the progress of the trial the prisoner had a well-marked eplieptic seizure. Dr. Gray sat beside him at the time, and sent a note to the judge that the accused was unconscious of what was going on. The court immediately adjourned; no witnesses were examined subsequently; the jury found a verdict of guilty, but sentence was not pronounced. The prisoner was committed to an asylum by a later investigation before a county justice, on the ground that he had been an epileptic, was then an epileptic, and was therefore a person of doubtful responsibility. He remained in the asylum for several years, had epileptic fits, and became quite deranged. Subsequently, he had an attack of fever, and regained his mental vigor; he was detained several years longer, but had no return of his epilepsy. By the repeal of the law under which he was convicted he was discharged. Dr. Gray added that he has since followed the case, that the man had conducted himself well, is earning a livelihood, and is now neither insane nor epileptic.

I will quote here another instructive case, which attracted a good deal of attention in England three years ago, where the man was tried, condemned, and about to be executed, without any suspicion on the part of his counsel of his condition.

Bisgrove was an illegitimate child, badly cared for from his birth, and had been always of weak health and intellect. For several years he suffered from frequent epileptic fits, in consequence of which, and his inability to take care of himself, he was discharged from the colliery where he worked. In the intervals between his fits, he was good-natured and amiable, and liked by his companions, but immediately after one of them he was dangerous, seizing upon anything that might be at hand, and ready to attack those near. Hoping that a sea-voyage might do him good, he shipped, but returned after a few months, unimproved. He is represented as having had the heavy, lost look so common in the confirmed

epileptic. Such was his condition when, one evening, after drinking a little, he saw a man unknown to him lying asleep in a field; he took up a big stone which was by and dashed out the sleeper's brains. Having done this he lay down by the side of his victim, and went to sleep. When he awoke he was taken into custody, tried, defended by counsel assigned at the last moment by the court, who said not one word about this creature's epilepsy, and was condemned, along with a perfectly innocent man, who was charged with being an accomplice, and who gave a perfectly true account, as it appeared afterwards, of his whereabouts and doings on the night of the murder, but was not believed. Soon after sentence, Bisgrove made a confession, exculpating his supposed accomplice. A clergyman, struck with the strange character of the murder, made inquiries about the prisoner's former life, found out that he was an epileptic, and had proper representations about the case made to the Home Secretary; a medico-judicial inquiry brought out the facts; a reprieve was granted, and Bisgrove was sent to Broadmoor, the English asylum for insane criminals.

Dr. Reeves, of Wheeling, West Virginia, sent me last autumn the following interesting case, which I will briefly relate.

F. W. D., æt. 34, born of healthy parents, of good constitution, and of quick intellect. At the age of twenty he had already shown so much ability as a business man that he was put at the head of very extensive iron works as manager, and conducted them successfully during the next eight or ten years. After assuming his arduous duties, he had a sudden seizure of momentary loss of consciousness, there was a vacant stare, and he staggered for an instant. Soon afterwards he suffered from a severe attack of typhoid fever, accompanied by delirium and stupor. He was dangerously ill for four weeks. Three months after his recovery, he had another transient attack of vertigo and loss of consciousness; and the seizures from this time became more frequent, until five years after his first "vacant stare," when he suddenly fell senseless to the ground, and was convulsed—in other

words, he had a regular epileptic fit. Two years before this he had married, and was to all appearances in full health. Two years after, having had in the meanwhile several seizures of more or less severity, he began to complain of loss of memory, and his constant forgetfulness annoyed him. About this time, his friends noticed a change in his disposition, and that he had become very irritable and impatient. In December, 1863, that is about seven years after his first seizure of *petit mal*, he had a very severe epileptic fit which lasted for more than a hour, and on getting out of it, he took up an old violin which he had occasionally before played on, and, instead of using the bow, he "picked" on it, banjo-fashion, unremittingly for twenty-four hours, an old tune he had learned in his boyhood. The fits now happened every three or four weeks, of variable intensity, to April 4, 1870, each one being followed by an uncontrollable impulse to make hurried music of the same old tune, from twelve to forty-eight hours. During this exercise he took neither food nor drink. At such times he could not be interfered with without the risk of producing fits of violent and unmanageable rage ; and if, on his demand, he was not instantly given some musical instrument, his fury was terrible. His friends never allowed him to go from home without putting into his pocket a jew's-harp, on which, after an attack, he would quietly play his favorite air, so long as he was not interfered with.

The fits invariably came on at midnight, and during the next twelve hours he would have as many as a dozen ; for the next twelve to forty-eight hours he continued busy with his music, neither eating, drinking, nor sleeping, and then, sometimes, for thirty-six hours he might be a raving maniac, who could be coaxed but not coerced. On one occasion, when his father attempted to thwart him, he fell on him, and nearly choked him to death. At another time he was taken to the station-house in Baltimore, for resisting a policeman who had interfered with him. He once rushed into a court-house in Maryland, to the astonishment of the bench and jury, and tried to arrest sentence of death which was being pronounced on a negro, and he was sent to prison for contempt of court.

For several hours immediately preceding a fit his memory is wonderful, and he will then after reading anything once, repeat page after page, scarcely making a mistake.

His general health is good; he sleeps well in the intervals of the fits; reads a good deal, particularly religious books, but, with the remarkable exception just mentioned, forgets everything almost as soon as read; is fond of company, delights in cards and dancing; is an immoderate water-drinker as well as smoker. His only complaint is of occasional pain in the right side of the head, and at such times his face is flushed.

He has had two children by his marriage; the eldest had an attack of convulsions when five years old.

No treatment had had any influence upon the disorder.

In a letter lately received from Dr. Reeves, he informs me that this unfortunate man had become a violent lunatic, and had been sent to an insane asylum.

Dr. Thorne Thorne, of London, has lately published a case well worthy of mention, on account of the peculiar psychical symptoms, which, in a measure, replaced the ordinary convulsive attacks.

H. S., a coach-builder, æt. 36, and of temperate habits, had, fourteen years previous to the present history, been exposed to the sun's rays for some time, and suffered from severe pain in the head for three weeks afterwards. After a rheumatic illness three years subsequently, the pain returned, and he had never been free from it for any time since; he had, too, occasional attacks of dimness of sight and trembling. He married, and became the father of several children. Nine or ten years after his partial sunstroke he had several well-marked epileptic fits, and they continued increasing in frequency until he had one on an average every third week. Up to this time in the clinical history we have nothing but a well-marked case of epilepsy; about this time a train of morbid mental phenomena appeared. Whilst in hospital for a slight bronchitis, he is reported to have become "strange in manner," and to have had some delusions. One night he suddenly jumped out of bed, rushed wildly to the door of the

ward, which he quickly opened, and then fell to the ground on his back. He was picked up and carried to his bed; he seemed to retain consciousness, but gave no explanation of his conduct. During his stay in the hospital, which was about a month, he was liable to these attacks, that is, spells of mental excitement, associated with delusions and followed by periods of depression. In the intervals he was cheerful, his manner was calm, and he was always ready to make himself useful. Before his admission into the hospital he had never had any mental symptoms, but during the next two years they frequently recurred in a very marked form. He had occasionally suffered from spells of mental depression, but these gradually were transformed into paroxysms of acute mental excitement. In these attacks he becomes suddenly wild, his intellect is confused and he will snatch up a knife, and declare aloud that he is going to kill his children, rushing after them into the closets, etc., where, terror-stricken, they may hide. After his wife has removed everything with which he might do himself or others harm, and locked up with him trying to pacify him, more than once it has required all her strength and tact to hinder him from throwing himself out of the window. After remaining in this state for several hours, and sometimes for an entire night, he will gradually get quiet and go to sleep. On awaking, he has but a dim recollection that he has in any way been ailing, and none whatever of what he has said or done during the seizure. These attacks are preceded by the same warning symptoms as his regular epileptic fits, namely, a sensation of cold and trembling.

It is also stated that this man subsequently became a subject of kleptomania. On one occasion, when it was noticed that he was suffering from a good deal of mental dullness, several parcels of violet and other scented powders were discovered on his person, which he could have had no object in purchasing, and about which he positively declared he knew nothing. Later, he was arrested for stealing his fellow-workmen's tools, which had been found in his possession. He most emphatically asserted that he had not taken the

articles. His well-known honesty and previous history favored the notion that the theft had been done during an access of epileptic vertigo. On medical evidence to that effect being given, the charge was withdrawn, and he was released. The medical officer of the prison who examined him, however, was unable to state that he could at that time find any indications of mental unsoundness, although, having heard of his former attacks, he said that he could not doubt that such indications had from time to time manifested themselves. This man is unquestionably liable during an access of his disorder to commit some serious criminal act. It will be remembered that his first morbid impulsive act was to rush madly, and apparently without purpose, to the door of the ward of the hospital, and he might just as well have made a motiveless, murderous attack upon a fellow-patient.

A few weeks ago, a lad, about ten years of age, was brought to me with the following history. In infancy he had had two severe attacks of convulsions, but nothing of the kind since. He was the youngest of a family of several children, of whom some were grown up, and all bright except this boy. His intellect did not develop, and he made small progress at school. Some two years since, twitchings of his hands were noticed; he kept them in constant motion, as well as the muscles of his mouth; about this time he became irritable in his temper, and, when reproved or thwarted by his mother, would get very angry, use bad language, which, it was stated, was not habitual with him, and throw anything that he could seize at his mother, and then run off, staying away for a while. On his return home he was always very penitent, expressed much contrition for his conduct, would burst into tears, beg to be forgiven, and promise to sin no more. Later it was noticed that everything eatable which came into his way he would appropriate, gorging himself till he became sick. The state of the article made no difference with him, and just before I saw him he had had a severe attack of illness from eating a quantity of rotten apples and spoiled peanuts which had been thrown into the street. He soon, too, began to pick up and put in his pockets everything he saw and could conveniently stow

away. At night he would empty his day's pilferings into a drawer, never thinking of looking after them again unless he was questioned about any missing article, and asked if he had it, when, if such were the case, he would immediately go and fetch it. With the exception of articles of food, he was never known to use, or convert into money, anything which he might have taken. Indeed, after his pockets were sewn up, he would carry openly in his hands his spoils. His mother had become fearful that his habits might get her into trouble and applied for advice. Regarding the motory troubles, taking the whole history of the case, as more of an epileptic than of a choreic nature, and that his impulse to steal was really irresistible, and his fits of rage might lead him to the commission of some dangerous act, I advised his being immediately sent to an asylum. Whilst he was under examination, and his mother was stating the case, I noticed that his expression of countenance suddenly changed, and that his face was quite pallid. I asked if this happened often, and I was told that he was angry at what was being said about him, and that one of his temper-fits was working in him; that he was restrained by my presence, otherwise that he would seize hold of the first thing handy, and "shie it" at his parent. A little while afterwards he began to sob violently.

It is undeniable that frequently the epileptic seizures happen only during the night, and may be so slight as to be overlooked. The nature of the mental troubles following these nocturnal attacks may, from this fact being overlooked, not be understood, and mistakes made fatal to the liberty or even life of the individual.

Dr. Duménil relates an instance in point. A soldier subject to sudden fits of passion was tried by court-martial for striking an officer. A medical inquest showed that he had had slight attacks of periodical mania. A long while afterwards, Dr. Duménil discovered that each of these attacks was preceded by epileptic fits during the night, of which the man had no knowledge, and which had escaped the notice of those who for several years had slept with him. The same physician mentions that several of his patients had passed several years in

asylums before the real nature of their infirmity was made out.

Morel mentions the case of a boy at a boarding-school, who was suddenly attacked during the night without apparent cause; he rushed wildly up and down the hall of the dormitory, shouting and gibbering loudly, and seized one of his fellow-pupils who was trying to quiet him, and attempted to strangle him. After some difficulty he was secured and put to bed, when he had an epileptic fit. The next morning he recollected nothing that had happened, but complained of feeling weary and exhausted.

About a year ago I was consulted by a middle-aged gentleman, who told me of his troubles as follows: Without warning or any immediate provocation, he would suddenly have the most horrible homicidal impulses towards certain persons who either really, or at the moment he imagined, had injured, or slighted, or offended him. In his room, or in the street, or crossing a public square, the fit instantly seized him, and fancying the supposed evil-doer before him, he would strike at him with some fantastic murderous weapon—stabbing him in the neck, or breast, or belly with a sharp instrument, or giving a blow on the head with a blunt one, the act being accompanied with the most violent, reproachful language. He said he was not aware that in the street, or when any one was present, the gestures or speech were more than subjective; but if alone he knew that he spoke aloud, and suited the words to the action. The fit over, he always felt very much exhausted, with more or less loss of muscular power, particularly recently, of the left extremities. Although occasionally in the company of some of the menaced persons, he had never at such time felt any disposition to harm them, or to behave towards them in any way that showed the feelings he at periods involuntarily experienced regarding them; but he was tormented by the apprehension that the time might come when he would be attacked whilst in their presence, and thus commit some horrid crime. He was a man of high moral tone and Christian training and practice, irritable, subject to temper-fits from childhood, but naturally of an amiable and generous dis-

position. He was greatly distressed at his infirmity, had for some time concealed it, and at last, dreading the possible consequences, sought advice. He said he had more than once decided to go voluntarily to an asylum, but was withheld from the fear of exposure and injury to his prospects and family. I found out in the course of my examination that he had had also at times suicidal thoughts, or, rather, that more than once the idea of the effects of the several methods of self-murder had been, as he said, irresistibly obtruded on his mind, and particularly the sensation of a discharge of a pistol in his mouth; but, as he observed, he had never seriously meditated at any time suicide; it was rather, as he called it, an æsthetical contemplation of the means of self-destruction, without any especial desire to practically test them on himself. Although he had had many vexations from pecuniary losses and general bad luck, he was usually cheerful, not cast down by, nor given to brooding over, his troubles, and performed the daily duties of his calling, which did not demand any very great mental strain, easily and creditably. He had no headache, and his general health was excellent. After one of these spells his left arm would feel weary and his left leg weighted, along with some numbness and tingling in the parts; these sensations would soon pass off. He had had neuralgic attacks occasionally for many years, but they had become lighter and rarer. He never had suffered from epileptic fits, or, as he thought, anything like them; nor had any of his family. One day he asked me to prescribe something for a sore tongue, and on examination I found evidence of its having been bitten, which led me to believe that he was subject to nocturnal attacks; and, on being questioned, he admitted that often before falling asleep he had remarked that his jaw snapped, and sometimes his limbs jerked. I looked upon these phenomena, apparently so insignificant, as really the key to the psychical troubles, and the effects of treatment have tended to confirm the opinion.

He remained measurably free from his mental disorder for many months; a few days ago he returned to me, saying that he was nearly as bad as ever.

An epileptic may have his attacks at long intervals and immediately after one of them have an irresistible disposition towards some criminal act, and then become apparently sane. Here we may have no indication to account for the morbid impulses if the antecedents are not known, or are overlooked; and an error in such cases is very possible if we form a judgment only by the present condition of the accused.

The following case happened about a year since in Missouri, and at the time excited much attention and gave rise to a sharp discussion about its medico-legal merits. The general facts are: Max Klingler, a boy about eighteen years of age, was a tailor's apprentice to his uncle. The day preceding the homicide his uncle had reproved him concerning his work, and also about the removal of a pistol from a drawer. The next morning, while the uncle was making a fire in the stove, Klinger approached him from behind, and putting the muzzle of a pistol close to his head, fired, and killed him. The wife of the murdered man on rushing into the room on hearing the shot, was seized by the boy, who struck her several blows on the head with a hatchet, which rendered her insensible. The murderer then took what money there was in the drawer, about thirty dollars, and ran for the railway depot, and such was his haste that he did not stop to pick up his hat which had been blown from his head in the street during his flight. Taking a train that was leaving for the West, he was arrested at a station a few hours afterwards, his hands and clothes being covered with blood. At the coroner's inquest he made a confession, admitting that he had killed his uncle because he had made him angry, and was not pleased with his work. He said that he had made up his mind on the previous Saturday to shoot him, and added that when he came down stairs on the morning of the murder, he bade his uncle good-morning as usual, but received no answer. He said that he then went to work and opened the shutters, and when he came back to the room, he saw his uncle making the fire, and, without saying anything further to him, shot him from behind. He further stated that when coming down

stairs he had no intention of shooting him, but had loaded the pistol in the garret. The prisoner was tried and convicted. A new trial was moved for on the ground of important depositions having been received from his native town in Germany, which showed (1) that Klingler, in early childhood, while playing in a barn had had a fall from a height of thirty feet, which had rendered him insensible with a wound of the head, which had caused a depression of the skull still apparent; (2). that since his fall he had been subject to fits, and on several occasions had suffered from temporary insanity; (3.) that his mother and sister and two daughters of the latter had been subject to epileptic seizures, and that the daughter of a maternal aunt was insane.

Another trial was had, and the jury not agreeing, there being seven for conviction and five for acquittal, a third one took place, and Klingler was again convicted. His counsel, having failed to secure a reversal by the Supreme Court of Missouri, took an appeal to the Supreme Court of the United States, the result of which is not stated in the report of the case from which I have made my abstract.

Admitting the fact established, that Klingler was an epileptic, and that his disorder was hereditary, it was contended by the prosecution that he was not seen in, or known to have had, a fit for many years previous to the act. It is true that a fellow-prisoner who slept with Klingler testified that he had acted very strangely, waking up and seizing the witness by the throat, seeming wild, strange, and bewildered. If such was the fact, there was possibility of nocturnal epilepsy, and Klingler should have been closely watched during sleep for many nights. In Dr. Bauduy's medico-legal report of the case I can find no evidence that the alleged depression at a point of the skull had been verified by any of the medical witnesses who had examined the prisoner, or that there was any proof that previously or subsequent to the murder, Klingler had had anything like an epileptic fit, except the doubtful evidence of his fellow-prisoner. In a statement which he wrote subsequent to conviction he, with much shrewdness, throws all the responsibility for the crime on his epileptic disorder. He shows much

adroitness in his plea, and such perfect memory about all the details of the deed, that I will quote a portion of it. "This event would not have happened," he writes, "if I had not received the sickness just on the 29th of November, [1869, the day of the murder], for I did not think that I would get the sickness on account of all these troubles. I had often said it in German that I would get the sickness about this time, and nobody should enter the room until I unlocked the door myself, for I get so crazy that I do not know what I am doing. It is dangerous for any one to be seen by me when I get the sickness. The doctor in Germany said to my parents that I would become dangerous during my sickness. I am very sorry that I was so unfortunate. I had the sickness on the 25th November, and unhappily the boss entered; I saw him; he came toward me and looked at me, when I struck at something. Then I saw that he wanted to come at me, and wanted to hold me, so I got so intensely crazy that I did not know what I was doing. How I got the revolver in my hand I do not know, nor how he lay there. Then she [the wife] ran towards me and wanted to strike me. I did not know with what I struck her. But when I came to my senses I saw what I had done, and was scared. Then I left immediately. If I had premeditated this I would have sent my clothes to some place. I kept the pistol by me every morning, because we had in our neighborhood about ten Indians. Every morning I was first in the store and was afraid of these fellows." This account of the assassination by the murderer himself, an alleged epileptic, with the avowed object of extenuating the deed by the fact that he was undergoing a paroxysm at the time, shows, admitting the correctness of the occurrence as given by him, which is not the case, for it conflicts with the evidence, is at variance with the statement made by him at the time of his arrest, and is evidently distorted to his own advantage. Admitting, I say, its truth, it proves perfect recollection of all the circumstances attending the murder, and is so ingeniously constructed as to weaken very much the theory of mental disorder from any form of epilepsy, which it attempts to substantiate, and it has all the appearance of a

lie coined after the plea of epilepsy had been imagined to avoid the consequences of his temper-fit. He had avowed on his first examination *premeditation;* he told the coroner that he "had made up his mind to kill his uncle the night before." Professor Bauduy, in his ingenious argument in favor of Klingler's irresponsibility, on the ground of his alleged epileptic attacks in Germany, argues in extenuation of the supposed premeditation, that "Klingler felt a morbid impulse the previous evening to kill his uncle, but through the supremacy of his will, coupled with intellectual power not wholly impaired, he was able to resist or correct such impulsive tendency. He did not kill his uncle until the following morning, after his usual salutation, and subsequently had opened the store for the day's business. Would not an ordinary criminal, premeditating his crime, have perpetrated the act during the darkness and stillness of the night, when his victim would have been completely at his mercy? Would he have courted publicity by opening the shutters in daylight, almost inviting the attention of passers-by on a greatly frequented thoroughfare? Then, again, what motive existed to incite the boy to such a terrible crime?" The argument, I confess, seems to me fallacious, and is urged more after the manner of a clever advocate supporting a specious theory, than a calm appreciation of the facts of the case. From the evidence before me, I am satisfied that Max Klingler was justly convicted of a premeditated murder, and was properly amenable to the penalty incurred. What the final result was, and whether the sentence was executed, I have not learnt.

In this connection the case of the Belgian, Rœgiers, may be cited here. Although the fact of epilepsy was admitted by the prosecution, the fact of premeditation having been established, the prisoner was held responsible for his act, and condemned accordingly.

Rœgiers was thirty years of age at this time; he had been subject to epileptic fits for three years, the consequence of sudden fright. After awhile the seizures were attended with attacks of maniacal fury. He had a foreknowledge of the onset, and would warn those about him. The fit over, he was

himself again, quiet and gentle, with no recollection of what had happened. The seizure was usually during the night, and whilst the fit was on him he would struggle violently. Rœgiers had had a quarrel with a companion, in consequence of which he had been sent for some months to prison. On quitting the prison he assured B*** that he had no grudge against him, as he was not responsible for the act of the court. Some time afterwards Rœgiers was seen quietly sharpening a knife on a grind-stone for over two hours, exclaiming from time to time, "I'll have your head." He left his house in broad daylight, knife in hand, and ran to the house of B., who lived in a populous quarter, and entered boldly. B. seeing Rœgiers come in armed with a knife, attempted to escape, but was pursued by Rœgiers, who struck a blow at B.'s sister while attempting to shelter her brother; reaching the latter, he threw himself on him like a tiger, and inflicted a terrible gash in his throat, thrusting in his fingers to enlarge the wound. The terrified bystanders refused any assistance until Rœgiers fell exhausted. Tried at the Brabant Assizes, he was condemned to death. He had no recollection of the horrid deed he had perpetrated, answering all the questions of the judge: "Since you say so, I suppose it is so, but I know nothing of it." Subsequently his sentence was commuted to the galleys for life and one hour in the pillory. Whilst he was undergoing the latter part of his sentence he was seized with a terrific attack of convulsions.

At the beginning of this paper I expressed the opinion that the mind of the epileptic is rarely, if ever, whole; though, unquestionably the alteration may be of a kind and degree not to affect either the moral or legal responsibility of the individual. But an epileptic dwells on the border line of insanity, and may, at any moment, pass the limit, and live there forever. We may in these cases have the whole gamut of insanity sounded from mere irascibility and capriciousness of thought, feeling, and conduct, to the most terrible explosions of maniacal fury.

The question then arises: Are all epileptics who have committed a criminal act to be considered necessarily as insane,

and consequently irresponsible? Should the proof of being subject to epilepsy alone insure acquittal? I do not believe that the simple fact of an individual being subject to epilepsy will ever come to be admitted by legists as naturally divesting him of responsibility for his acts; and the medical expert who maintains such a doctrine runs the risk of seriously compromising himself. In some cases, as I have said, the state of mental deterioration or perversion is such as not to admit of question; lasting traces of the disease leaving its mark on the mind. Again we meet with epileptics who are fulfilling all the duties of life, and whose real condition is not suspected; it is hard to assert that these persons are absolved from moral responsibility. We should be wrong then in always arriving at the conclusion that an epileptic is necessarily deprived of moral liberty, and therefore may claim immunity from the consequence, of a criminal act. He may, in committing the offense, have obeyed some interested motive, and there may have been criminal premeditation, and at the time of the act full power of self-control, so that he could have refrained from the act had he liked so to do. There may be, then, no small difficulty in distinguishing the responsible criminal from the irresponsible lunatic. The mere fact of the commission of extravagant and vicious acts by an epileptic is not sufficient to divest him of responsibility, and secure to him immunity for his acts. There must be proof and demonstration, beyond reasonable doubt, of his inability to control his vicious instincts. It must be shown, to quote Mr. Erskine's language, that "the act in question is the immediate unqualified offspring of the disease." And we should always have in mind that we are bound to protect the rights of society as well as the rights of individuals. A general plea of insanity should not therefore absolutely protect every epileptic against the consequences of his act. A careful inquiry is to be made into the circumstances of each case, and the evidence thoroughly sifted. The period of the seizures should be learned; whether near to or remote from the time of committal of the act charged; the slowness or rapidity with which the seizures are recovered from; the mental state during the intervals—are all

to be fully considered before you can decide whether the accused has been the victim of horrible imaginings, or yielded to a criminal suggestion of his free will.

Many of these unfortunates are quite aware of and appreciate their terrible infirmity; they have a correct notion of right and wrong, but cannot control or resist their morbid impulses. They may have a foreknowledge of what will inevitably happen, and beg to be protected against themselves. Marc tells of an epileptic who, after being several times in an asylum, decided to remain there permanently, for his seizures were commonly preceded or followed by transitory fury, and he several times had attempted to kill his wife and servants. These mental impulses are not always irresistible, and may for a time be successfully opposed, but are liable at any moment to be transformed into acts against all the efforts of the will. After a criminal deed the epileptic may use this language: "I was urged on, something forced me, in spite of myself; I understood full well the atrocity of the act I was about to commit. I resisted for a while with all my might, but the time came when the horrid impulse mastered me. I had no power over myself, and had to yield to the horrible suggestion. No sooner was the act done, and I was myself again, than I saw it in its true light; I realized all the consequences, and was horror-stricken at what I had done; I lament my weakness, but I feel that my will had nothing to do with it."

Now, if the legal test of responsibility—the full knowlege of right and wrong at the time of the act—be applied to such cases, most monstrous injustice would be done, and yet this has been the English law since it was laid down by Lord Hale, and is constantly quoted by leading authorities. As Professor Laycock remarks of this bloody-minded persecutor of old women: "He disregarded in his *dicta* alike the principles of pathology and of common sense, and of ethics founded thereon."

I know that the theory of "irresistible impulse" has but little favor in courts of law, and, perhaps, with good reason. It has too often been the plea of those who, as Edgar tells us,

"when sick in fortune make guilty of their disasters the sun, the moon, and the stars; as if they were villains on necessity; fools by heavenly compulsion; knaves, thieves, and treachers by spherical predominance; drunkards, liars, and adulterers by a forced obedience of planetary influence; and all that we are evil in by a divine thrusting on. . . . An admirable evasion of the surfeit of our own behavior."

And yet I cannot but believe,—when the doctrine comes to be properly understood,—that in certain cases of epilepsy the mind is, as it were, conditioned to insanity; that the faculty of the will may be smothered for a time; that the individual so afflicted is not responsible as a free agent; and, when discreetly and properly urged, the plea will meet with recognition.

Until quite lately the notion of mental disease, which has been most generally held, and is still the doctrine of the law-courts, is that insanity is an intellectual and not an emotional disorder. The validity of this view was first questioned by Dr. Bucknill, and he attempted many years ago to establish the important principle that morbid emotion is an essential part of all affections of the mind. "With the exception," he writes, "of those cases of insanity which arise from injuries, blood poisons, peripheral irritations, and other sources of an unquestionably physical nature, the common causes of insanity are such as produce emotional changes, either in the form of violent agitation of the passions, or that of a chronic state of abnormal emotion, which exhibits itself in the habitually exaggerated force of some one passion or desire, whereby the healthy balance of the mind is at length destroyed. From these and other reasons, from the definite operation of the reasoning faculties, and their obvious inability to become motives for conduct without the intervention of emotional influence, and also from the wide chasm which intervenes between all the legal and medical definitions of insanity founded on the intellectual theory and the facts as they are observed in the broad field of nature,—the conclusion appears inevitable that no state of the reasoning faculty can, by itself, be the cause or condition of madness, congenital idiocy and acquired

dementia being alone excepted. The corollary of this is, that emotional disturbance is the cause and condition of insanity. This is especially obvious in the periods during which the disease is developing. Disorders of the intellectual faculties are secondary; they are often, indeed, to be recognized as the morbid emotions transformed into perverted action of the reason. In no cases are they primary and essential."

In a late text-book on Insanity, Dr. Blandford insists strongly on the importance of the emotional trouble. "This emotional alteration," he says, "points not to a disturbance of one portion of the brain, but to a morbid condition of the whole nervous system of the highest significance."

Finally, the question comes up as to the length of time before and after a seizure, that an epileptic should be considered as irresponsible before the law. Zacchias has laid it down that every epileptic should be held as irresponsible for any criminal act he may commit three days before and three days after a seizure. I think, from what has been said in this essay, that no absolute rule can be laid down, and that each individual case must be considered on its own merits, and the different circumstances under which the several forms of mental troubles in the epileptic may be developed must be borne in mind.*

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* It has always been a question in legal medicine, within what period before or after a fit an epileptic can claim immunity for a criminal offense. In cases of this kind, bearing in mind the cases that have been recorded, are we able to fix upon such a period? Is there any time when the epileptic can be considered as clearly free from the pathological effects of the disease? Can he ever commit a crime without being entitled to excuse? At any rate the criminal acts of epileptics should ever be regarded by the expert with great distrust, and receive the most exhaustive investigation. I think he is bound to accept the single alternative, either that the patient has entirely recovered beyond the reach of the epileptic disease, or that he is, in some degree of probability, still suffering from it. He is clearly entitled to the benefit of every doubt (Dr. Isaac Ray—*Proceedings of the Association of Medical Superintendents of American Institutions for the Insane. American Journal of Insanity* for October, 1870)

MEDICO-LEGAL SUGGESTIONS

ON

INSANITY.

By CHARLES A. LEE, M. D.*

Among the various questions with which medical men have to deal, those relating to mental diseases are the most difficult, and at the same time the most important. They stand separate and apart from all others. They especially involve the momentous question whether an individual is to lose social and civil rights and privileges, personal liberty, and even life itself, and these issues are to be determined by the opinions of men who have never made such subjects a matter of special study. They do not enter into the curriculum of the schools. Should not such a strange anomaly as this attract the serious attention of the medical profession, if not that of the community generally? More than sixty thousand otherwise happy homes in these United States are to-day made wretched and sad by the fact that one of its beloved members is deprived of reason, perhaps kept within the family precincts, to the fear and discomfort of all the other members, at an expense ill-afforded, or what is still more likely, a suffering, neglected inmate of some wretched, God-forsaken poorhouse, abandoned by hope, and waiting that relief, which death, sooner or later, brings to all. Our noble, palatial State lunatic asylums give shelter and care to seven thousand of this unfortunate class;

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but there are sixty thousand others of the same class, a majority of whom are inmates of poorhouses and jails, and the numbers are increasing far more rapidly than provision for their relief. These facts certainly deserve not only the attention of medical men, but of governments and legislators, for no civilization can be called advanced, or worthy a religious people, that leaves its poor insane in a more wretched condition than its domestic animals.

It cannot be said of this country what Manderley says of England, that the land has been covered with overgrown and overcrowded asylums, to which almost the whole lunatic population of the country has been assigned, but it is very evident that all has not been done which can be done to secure the best medical treatment for those who are curable, and the greatest comfort of those who are incurable. Let our wretched almshouses answer this question.

I have no desire to disparage or depreciate our lunatic asylums. They are a glory, an honor, an inestimable blessing to our country. They deserve most richly the moral support of our profession. They need all the encouragement that physicians can give. Facts, which need not here be stated, show very conclusively that there exists a wide-spread jealousy of lunatic establishments, and those who superintend them; they are weighed down by an undeserved odium and unjust suspicion; public legislation in regard to them grows more and more stringent; the motives of their managers are more and more impugned and questioned, and their services rewarded by a mere pittance of a salary.

The profession, also, have a duty to perform in regard to enlightening the public mind with respect to the nature, causes, and proper treatment of mental diseases. The annual reports of our superintendents cannot reach the public ear but to a very limited extent. Few, indeed, read these reports, and few of these reports are calculated to diffuse the information needed. Let medical men inform themselves of the great and leading facts regarding mental alienation, and then as they have opportunity disseminate this knowledge among the community, where it is so much needed. This will inevitably

react upon those who have charge of our asylums, and cheer their hearts and strengthen their hands. In this way the shame, horror, and dread of insanity which now infect the public mind will be, in a great degree, removed. Then, too, the gross neglect, the too often cruel and inhuman treatment of this unfortunate class—the offspring of unjust suspicion and fear—will be replaced by kindness, sympathy, and *real moral treatment:* that is, the influence of the sane mind brought to bear upon the insane. We have inherited, to a considerable extent, the false views and hostile feelings of our British ancestors regarding the insane—legacies of that ancient superstition which regarded this class as possessed and tormented with evil spirits, as a punishment either for their own sins or those of their parents. This diabolical notion can only be exorcised by reason and facts.

But my object in this paper is to offer a few medico-legal suggestions that may possibly aid in discharging the duties of an *expert* in cases in which the subject of lunacy is involved.

In regard to a correct definition of insanity, which would not be justly open to criticism, I hold it to be an impossibility. If we say it is the result of physical disease of the brain, in consequence of which the sound and healthy action of the mental faculties is impeded or disturbed, we necessarily include the varieties of delirium which occur sympathetically in fevers and inflammation, in narcotic poisonings of various kinds, as well as from retention of morbid matters in the blood—as in albuminuria, etc. Our object in these cases evidently cannot be attained except by enumerating the history and circumstances of the particular case in hand—the actual disturbances which the mental faculties have undergone. Owing to the almost infinite forms which mental alienation assumes in different cases, writers on mental diseases have made a great number of classifications of the disease, and, doubtless, a great many more might be made if any useful end could be attained by such classification. We might, for example, suppose the mind divisible into the perception, the intellect, the emotions, and the will, and that either may

act independently of the other; but in insanity this is not the case; no sanitary *cordon* is or can be drawn around the diseased portion; all these faculties are more or less involved in the morbid action, some more, some less, but all to a greater or less degree; and, hence, these various forms have but a shadowy foundation to rest upon. At present, owing to the unnecessary hair-splitting attempted by different writers on mental diseases, the whole subject is involved in unnecessary confusion and difficulty. The first question the *expert* is usually called upon to answer in our courts, as already stated, is, *what is insanity?* and if he can give an answer satisfactory to himself, a million to one it will be caviled at by the bar. Out of a score or more of definitions given in standard authorities, I have said I do not know one but what is obviously liable to objection. The one given in fewest words is open to fewest objections.

I have encountered least opposition and querulous carpings when I have replied promptly, and as if there could be no other proper answer to the question, and as if any lawyer who could even "put such a question was himself *non compos:*" "*Insanity is a derangement of the mental faculties, consequent on disease of the brain, the seat and organ of these faculties.*" This answer by no means involves the necessity of ascribing every *criminal* action to some abnormal or morbid condition of the cerebral organization, as some have supposed, but only that every manifestation of *healthy mind* depends on the healthy organization and action of its material investment, the brain, and that it is not the function of a sound and healthy brain to give rise to any other than healthy manifestations. It does not deny the desperate depravity of human nature. I am not aware that, out of Germany, the *psychological theory,* which is based on the assumption that the primitive source of mental diseases is in the soul itself, has any advocates among us. One thing is certain, and that is, that the pure psychologist who relies entirely on the psychological method of self-consciousness in investigating mental phenomena, who regards the mind as an *entity,* acting independently of a material organism, and aims to discover the laws of the

human mind by contemplating it in itself, must confess that, if his theory be admitted, the *mind* or *soul* itself must be diseased in insanity, and if diseased, it may perish like the body.

For all medico-legal purposes, insanity may be divided into *mania, dementia, and idiocy,* and each of these subdivided to any extent. The more common forms of mania enumerated in books are monomania, melancholia, homicidal-mania, suicidal-mania, kleptomania, pyromania, fanatico-mania, politico-mania, pseudo-nomania, etc.

According to Pritchard, *mania* is synonymous with "raving madness," a form of disease where the mind is perpetually in a state of confusion and disturbance which affects all the intellectual faculties, and interferes with their healthy exercise even for the shortest period. But such cases, if they now exist at all, are an exception to the general rule. Dr. Mandesley, son-in-law of the late Dr. Conolly, of Hanwell, England, who has been in charge of a lunatic hospital for many years, states that "it is most certain that the horrible type of *furious mania,* which was common enough in olden times, is seldom, if ever, met with in English asylums now, simply because the old system of restraint has been abolished. The yelling, and the bawling, and the violence which were thought to be inseparable from insanity are not witnessed now in asylums, because the insane are not brutalized by degrading restraints. In fact, exhibitions of madness were then witnessed which are no longer to be found, because they are not the simple products of malady, but of malady aggravated by mismanagement."

I can testify to the truth of this important statement from my own personal observation, not only in foreign lunatic asylums, but in those in our own country, where nothing is more common than to see patients boisterous and violent under the indifference and harsh usage of ill-tempered persons, becoming mild, quiet, and manageable under the sympathy and gentle behavior of kind and considerate attendants.

Is it at all remarkable that an insane patient should mingle the realities of the treatment to which he is subjected with his delusions of suspicions or fears? and if this be harsh and

unsympathetic, he will naturally become furious, and resist it with all the energy of his frenzy. As Mandesley says, "it is easy to perceive that if a patient imagines himself to be in hell, or about to be murdered, and those around him to be devils or murderers, as happens now and then, he is not likely to be disabused of his morbid idea by devil-like treatment." Few will be disposed to question the correctness of this writer's statement, that the use of mechanical restraints in an asylum, public or private, is an indication of a badly-managed institution, and that, in the treatment of private cases, they are unnecessary and prejudicial. Independent, then, of wrong management, very few cases of mania can, with propriety, be called "raving madness." Like most other diseases, nearly every case has its period of incubation, but as no one can tell where health ends and disease begins, so no one can say in what degree mental alienation is sufficient to constitute insanity. How useless and unsatisfactory then, in all such cases, are the elaborate and subtle definitions of the term *insanity*. As no one can say where twilight begins or ends, so no one, but He who formed the mind and created its laws and gave it a material instrument for its varied manifestation, can decide when such manifestations on the border line are normal or abnormal. But where is the human skill the knowledge, the experience, the penetration, or the tact that can decide such a question infallibly? and yet the *expert* is expected to do it, and that with positive certainty. Slight experience may enable us to decide a *typical* case of insanity, but in how many points might it not vary from any we have ever had to manage, or commit to the asylum? When asked to describe such typical case we might, perhaps, say it commenced in emotional disturbance and eccentricities of conduct; there was at first a morbid perversion of the feelings, affections, and habits of the individual, without any particular illusion or hallucination, and for a time there was no perceptible or particular disturbance of the intellectual faculties; finally, symptoms of decided mania made their appearance, which eventually passed into dementia; and yet one of the most lamentable cases of madness I ever saw was in a lady,

who became suddenly, and I may say, instantaneously and totally insane from seeing the death, by violence, of a favorite son, and she has remained so till the present moment, though several years have since elapsed. It is, no doubt, a difficult question to solve, whether a person can suffer from one of the recognized forms of mental derangement without ever falling victims to another, or whether these different varieties can run their particular course uncomplicated, each having its own special diagnosis and prognosis, as well as special treatment? From all I have seen, and I have made this subject a life-study, I am disposed to give a negative answer to this question. I look upon them all, not as natural pathological *entities*, but different degrees of degeneration of the mental organization, or degeneration from healthy mental life, now intermixed, now replacing one another, now succeeding each other, in the same person. Let us not impose divisions on nature where she has made none herself. Artificial creations may aid the memory, but they are not all favorable to the real progress of science. The *Moral Insanity* of Pritchard, synonymous with the *Mania Line Delirio* of Pinel, the *Monomanie Affective* of Esquirol, &c., all point to that form of mental derangement, where the predominant feature of the case is a deep perversion of the feelings, propensities, sentiments, and acts, which, if not arrested, is certain to end in positive intellectual disorder and *dementia*. It is undoubtedly the most dangerous form of insanity, not characterized by incoherent loquacity, like intellectual insanity, but rather by sudden and violent, perhaps murderous actions, and unconscious deeds. We meet with all manner of hallucinations and illusions, dangerous impulses, requiring constant watchfulness on the part of the attendant. A characteristic feature of these cases is the loss of the directing power of the will. The individual is no longer a free or responsible agent. He is neither justly bound by civil contracts, nor is he amenable to punishment for criminal acts. The records of medical jurisprudence abound with cases where such individuals have alienated their estates into the hands of strangers, or been executed as malefactors. It would doubtless be wrong to infer insanity from

simply the *act alone*, but this should go a great way, in connection with other suspicious circumstances; if a mother should murder her children, for example, without the slightest appearance of a motive, few, if any, could doubt her positive insanity.

Every one must acknowledge that, in many cases, there is great difficulty in drawing the line between extreme moral wickedness and depravity and insanity, in deciding at what precise point an individual ceases to be a responsible moral agent and amenable to the laws. If medical men are inclined to adopt the most charitable view in such cases, and lean to the side of mercy, it may be because they entertain more favorable views of human nature than people generally; or because they better understand the influence of organization and physical causes in modifying and shaping human character. At any rate, while the idea of the sacredness of human life so extensively prevails as at present, and the opposition to capital punishment is so strong in the community generally, it is by no means strange that medical witnesses should lean towards that theory that commits the accused to the quiet wards of an insane hospital rather than the hands of the executioner; knowing, moreover, that time, the true revealer of secrets, will, ere long, reveal the true nature of the case. Owing to the total neglect of early moral and religious training, how often do we find individuals among the lowest classes of society totally dead to every moral principle and feeling, incorrigible, and destitute of all sense of shame or remorse, when reproved for their crimes or their vices? Are these persons, for whose conduct society should be held in a great measure responsible, to be mercilessly subjected to the extremest rigors of the law? Whether the doctrine of *moral insanity* be admitted or not, where the question, at least, of insanity is raised, would it not equally subserve the ends of justice, and those of humanity still more, were such cases committed to the safe custody of a lunatic asylum than the walls of a prison, or the *ultimo ratio* of the gallows? I know that in many of these cases there has been no specific manifestation of cerebral disease; but who can tell how much may be owing to defective and bad organization? Phrenologists

have thought that their doctrines laid a good foundation for a division of lunatics into two great classes: First, those who were insane or irresponsible from original organization; and, second, those who had become insane from diseased actions of the brain produced by hereditary predisposition, or ordinary causes. Of the former, numerous cases are given by Gall, Spurzheim, Combe, Pinel, Esquirol, and other writers—*vices of conformation* in the cranium are met with only among idiots, imbeciles, and Cretins.

Our judges, as well as the legal profession generally, are unwilling to admit the existence of *moral insanity* without any hallucination, illusion or delusions; and I think not without good reason. It is virtually saying that wherever there is a perverted state of the active and moral powers included under feeling and volition—the affections, propensities, temper, habits, and conduct—*there is insanity;* ignoring wilful vice, a wicked heart, the influence of bad associates, evil example, and reckless depravity. That there may be insanity without delusion, all must admit; but where permanent delusion does exist there must be insanity. Where the feelings, affections, and habits are as much affected, as they must be in all cases ranked under moral insanity, there all the modes of thinking and reasoning must be tainted by the self-feeling which exists; in short, the intellectual faculties are more or less involved. The very reason why the patient is so eccentric and perverse in conduct, so destitute of natural affection, so changed in sentiment, is that he no longer truly realizes his duties and his relations—all his ideas in regard to himself are false; but, *pari passu*, as his natural healthy feelings are restored, the intellectual powers once more gain the ascendancy.

We see no necessity, therefore, in medico-legal investigations, in recognizing any such form as moral insanity; and it would remove a great weight of prejudice against our profession, on the part of our legal brethren, to repudiate any such doctrine from our medical creed. The influence of extreme hereditary taint in determining insanity in the offspring is a fact dependent solely on observation. Whether this hereditary predisposition signifies some unknown defect of nervous ele-

ment, causing an innate disposition to irregularities in the social relations, or whatever may be its *modus operandi*, must remain among the mysteries of causation; but that it is more likely to act upon our moral rather than our intellectual powers remains to be proved.

How often do we see a retrograde metamorphosis of mind going on in particular families. By successive stages of cultivation and favoring circumstances, they have reached a very respectable intellectual, moral, and social *status;* they rank among our most useful, respected, and refined members of society; their mental evolution has reached its highest point; henceforth its progress is downward—family degeneration succeeds; improvement seems no longer possible, and fortunate may it be considered if all its members escape the custody of a lunatic asylum.

I have divided insanity into *mania*, *dementia*, and *idiocy*—including under the latter *imbecility;* but, perhaps, a more natural division would be into two classes, viz.: First, insanity without positive delusion; and second, insanity with delusion —or *affective* and *ideational* insanity. Each of these could be divided into several varieties—each variety marked by alternate fits of excitement or depression; but as such division leads to no useful, practical results, it may be dismissed with the others. It should be the aim of physicians to divest insanity, as far as possible, of all mystery—to show that it is a physical disease, observing the same pathological laws as other diseases, and as no more owing to a "visitation of God" than any other affection. The more we investigate its nature, the more shall we be convinced that it observes the same course of incubation, development, and termination in cure or death, as disease of any other vital organ. Like any other disease also, it may remain for a long time latent; or, manifesting itself, may be checked or controlled by curative measures, or warded off by proper precautions and remedies.

The *expert* is sometimes asked to describe the phenomena of insanity—as well describe the hues of the chameleon. They are as various as the different cases, and changing every hour. I have already said it was impossible to draw the line between

soundness and unsoundness of mind. *Eccentricity* so strongly marks the conduct of some in individuals that actions natural to them would be marks of insanity in others. The best and easiest test to decide the question in any individual case, is to inquire whether there has been any strongly-marked change of character, or departure from the ordinary habits of thinking, feeling and acting, without any adequate external cause. In short, a man should be compared with himself and not with others to decide whether he is insane or not. If there has been no departure from his ordinary conduct and character, he may very safely be declared *sane ;* if there has been a marked change in these respects, such a judgment would hardly be safe. For this reason, no persons are proper judges in regard to the mental condition of many individuals, but such as have long known them intimately. They must be well acquainted with their peculiarities and idiosyncracies of thought and feeling ; but it is a delicate point to decide, whether the change has reached such a degree as to vitiate civil contracts or to exempt from criminal responsibility.

The division of insanity into general and partial, doubtless exists in nature, and forms the foundation for *monomania* and *melancholia*, which were used synonymously by the older writers. *Acute* and *chronic* are also varieties found in the books, and existing in nature, while *melancholia* is simple melancholy without delusion. *Impulsive insanity* is any form where dangerous impulses may arise, and *homicidal* where such impulse results in a deadly attack on human life. In like manner *suicidal* insanity explains itself, as do all the other varieties by the names by which they are indicated. That there are such forms as *kleptomania*, *pyromania*, and *oinomania*, and *pseudomania*, or a morbid propensity to *steal*, *burn*, to *drink*, and *lie*, is conceded by some of our standard writers, but whether that new form discovered in a well-known banker and broker in Wall street a few years since, viz. : "an *irresistible propensity to make paper*," in other words, to *forge*, be so generally admitted, may well be doubted. Still the law will persist in regarding these vices rather as indications of moral delinquencies than of insanity.

There is, in reality, a better foundation for making a division of mania into *general* and *partial* than into *intellectual and moral*, for reasons already stated. For purposes of description merely such a classification may possibly answer some useful purpose, but I think it would be difficult to find any such distinction existing in nature. It is very possible that derangement of the moral powers may be more strongly manifested in some given case than that of the intellectual faculties, or *vice versa*, but there can be no question that both are more or less involved in every decided case of insanity.

Pritchard has made *dementia* synonymous with *incoherence*, but this latter is surely nothing more than one of its consequences or concomitants. The term implies a general enfeeblement of the moral and intellectual faculties, which were originally sound and well-developed, and this in consequence of disease, old age, or injury. Its chief characteristics are loss of memory, indifference to the present or future, with childishness of disposition. It is essential that this be not confounded with *idiocy* or *imbecility*, for these are congenital, and imply a natural destitution of powers that were never possessed. Some writers make them simply shades of the same mental condition, but they are not so to be regarded. The knowing faculties have never existed, and hence knowledge has never been acquired. The mind is not capable of acquiring ideas, but always remains the same. But in *dementia* the faculties have existed, but have been enfeebled, deranged, or even destroyed. This is often seen in old age. We say a person is "*demented*" when he has lost his faculties, he is an "*imbecile*" when he naturally lacks mental capacity; a lower grade still would constitute *idiocy*, which is always congenital. *Idiocy* and *imbecility* run into each other, they are only different degrees of the same mental condition—a perpetual state of childhood. *Dementia* takes place after the age of puberty, except from injuries or sickness, while the former are always manifested even in childhood. In *dementia* the past may not be forgotten, but the mind constantly wanders from one thing to another, hence it is called *incoherence* by Pritchard. He says "the mind in this state is occupied, without ceasing, by

unconnected thoughts and evanescent emotions, it is incapable of continued attention and reflection, and at length loses the faculty of distinct perception or apprehension." Pinel has described it as "consisting in a want of coherence, or of the usual and natural connection or association between ideas, thoughts, and emotions." *Dementia* may be either a primary disease, produced by the action of exciting causes on a constitution previously healthy, or it may be secondary, the result of other disorders of the brain and nervous system, which, by their long duration or severity, give rise to disease in the structure of those organs. The original causes of dementia are the same as those of insanity in general. I have already referred to a case of acute dementia in a lady, brought on by a severe mental shock, on seeing a distressing accident. I saw this woman five years afterwards, in the New York State Asylum at Utica; her dementia had passed into a chronic and incurable state. Indeed, *chronic dementia* is the form of insanity which we most often meet with, and we meet with every degree of mental decay in different cases, as it often follows an attack of acute insanity, the mind often being in a state of comparative weakness for a considerable time. Many of these chronic patients are able to do considerable work, their bodily health being pretty good.

In its extreme degree *dementia* must, of course, invalidate any civil contract, and exempt from criminal responsibility. Legal capacity depends on the degree of enfeeblement and state of the reflective powers. When the mind is in this transition state, which may require months or years, it is next to impossible to draw the line and say, up to such a point, a patient has entire freedom of will; beyond it, this freedom of action is lost. These are those difficult cases, in both civil and criminal jurisprudence, which puzzle courts and confound juries, and which can never be decided by any infallible test. Probabilities are all that lie within the scope of human judgment. If the will be a reasonable one, (if a will be in question,) one which the testator would probably have made in health—one suitable under all the circumstances of the case —then it should be regarded as valid, and should stand;

otherwise, not; all that justice seems to require is, that the strength of mind should be equal to the purpose to which it is to be applied; and, moreover, this principle has been frequently recognized in our courts of law until it has now obtained the force of established authority. A person, it is now held, and very properly, may be competent to direct the distribution of his property by will, and yet not have sufficient strength of memory and vigor of intellect to make and digest all the parts of a contract, or manage his estate.

It is very desirable that the bar and the medical profession should, as far as possible, come to some common understanding in regard to the nature of insanity, as well as the various kinds which may come up in criminal or civil jurisprudence. It is not long since even physicians entertained any correct notions regarding this malady, its causes, or even its seat; it is by no means strange, then, that injustice should be done the insane through the operation of laws enacted long before the nature of their disease was correctly understood. I suppose it will be universally admitted that real insanity should exempt from the punishment of crime, as well as vitiate, to a certain extent at least, civil suits; the only difficulty is to decide whether the individual be insane or not, *in the meaning of the law*. Even *experts*, those who have all their lives been engaged in the management of the insane, are frequently as much at a loss as others who have never seen a single case of the disease. A great portion of the difficulty grows out of the fact, of the astonishing variety of the mental phenomena in a state of health. Certain it is, therefore, that a thorough knowledge of healthy psychology, or the mind in its healthy state, is essential to the attainment of a knowledge of its diseased manifestations. Much of the jurisprudence of our courts, judging from recent decisions, will hardly bear a very close scrutiny, and this can hardly be wondered at, when *experts* of reputation and standing can be found to express opposite opinions with equal confidence, to the confusion of judges and juries, and the wondering admiration of the bar. Medical men are very apt to be looked upon as reformers and theorizers, "reasoning in a circle," as stated by one of the

judges in the Parish will case; while the ministers of the law seem chiefly anxious to uphold the wisdom of the past, and the precedents of a former age, turning away with blind obstinacy from the discoveries of modern science and everything which would seem to conflict with established maxims and decisions. Although our courts may not undertake to gauge men's intellects they do insist on technical distinctions, which often have no foundation in nature or reason. And juries are found ignorant, perverse, or stupid enough to decide that an individual may be perfectly *sane* up to the very moment of shooting a man—*insane* while he committed the act—and again *sane* the moment afterwards, and on this ground bring in a verdict of "not guilty." The term "*unsoundness of mind*," which has been adopted in the statutes of the State of New York, to escape the difficulties attending the use of the word "insanity" is really surrounded with precisely the same difficulties, though in its application it doubtless declares the incompetency of the person to manage his affairs, together with the loss of reason, though the former seems necessarily to follow the latter. The experience of the last quarter of a century, and a better knowledge of healthy and unhealthy psychology, have conclusively proved that a knowledge of good and evil, of right and wrong, and the power of design or contrivance are entirely unreliable, and to be regarded as fallacious tests of responsibility; nor is the existence of *delusion*, as Sir John Nicholl claimed, a true test of the absence or presence of insanity, for it is often absent; though when present, it usually does indicate mental alienation.

I have said it is better to avoid using the term moral insanity in courts of law. If the term be used by medical men it will, in all probability, be unfavorably received; and, besides, the fear of evil consequences that may result from its adoption as an excuse for crime dependent on anger, revenge, malice, or a wicked heart, will always prove a very effectual bar to its recognition in medical jurisprudence. As long as some of the ablest lawyers and most learned jurists pronounce the term to be a "groundless theory," it is better to avoid the use of it altogether; inasmuch, moreover, as wherever such a form of

mental unsoundness does exist there will always be greater or less perversion of the mental faculties present. "A propensity to theft," says Pritchard, who originated the theory, "is often a feature of moral insanity, and sometimes it is its leading, if not its sole characteristic," p. 28. But can *kleptomania* exist unless there be more or less derangement of the intellectual faculties, the judgment, and the understanding? That form of mental alienation which usually goes under the name of *melancholia*, and which is a very common form of monomania in our country, may, as in the case referred to above, be the consequence of some strong moral emotion, as grief or fright, or it may follow an attack of mania. In the case of a deceased lady whose will is being contested on the ground of insanity, in which I am now employed as an expert, the malady was slow in its development, brought on by domestic unhappiness. For nearly twenty years she was subject to alternate fits of exaltation and depression, long fits of crying, and keeping her bed; then an immoderate elation of spirits, and constant motion, her talk at all times incoherent and wonderfully rapid—at times laboring under the strangest delusions and hallucinations—her physical health all this time tolerably good. She at last made a will, which was duly attested and executed, giving all her property to a stranger, cutting off an only sister and other near relatives without assigning any reason whatever. This case is still pending, but the result is not doubtful.

In this, and all other cases of dementia with which I have been concerned, the mind has not only been enfeebled, but actually perverted and deranged. There has always been more or less delusion and strange hallucinations—much irascibility when thwarted or oppressed; and not unfrequently acts of violence. Society must always be exposed to more or less danger from this source, because it cannot always be foreseen or prevented. An asylum is always the proper place for patients subject to sudden impulses, or who are at all disposed to acts of violence. A large majority of the chronic insane, however, are entirely safe, quiet, and manageable.

The duties of superintendents of asylums are not only often

extremely difficult and dangerous, but in the highest degree responsible ; and one of the most delicate and important questions they have to decide is, whether or not *a patient is so far restored to sanity as to justify his discharge from an asylum or render valid any civil acts he may perform?* The frequent return of patients to the hospital, after they have been discharged as cured, shows that such discharge is often premature. These frequent discharges multiply the ratio of cures without the reality, and exposes society to unnecessary dangers. I am disposed to hold that, where insanity is proved to have existed, it should exclude from responsibility, as the disease is so intricate in its nature and the symptoms so liable to be mistaken, and especially where the act itself indicates insanity. These distinctions between *partial* and *total* insanity cannot be maintained, nor can the line of responsibility ever be safely drawn. In criminal cases, where lunacy is suspected, the accused should always have the benefit of the doubt, and society be protected by his safe confinement. Besides insanity, even if slight or partial to all appearances, is never safe from sudden paroxysms and aggravations of symptoms. It is worthy of serious inquiry, whether the time has not arrived for reconsidering the rulings of our courts and the opinions heretofore prevalent among medical men in regard to the existence of "*alcoholic mental affections*, as causes for legal interference with the liberty of the individual, or with his responsibility for crime."* The statistics of our lunatic asylums show that intemperance is the most frequent cause of insanity in the United States, ranging in different institutions from fifteen to sixty per cent ; in foreign asylums it is twenty-five per cent.—(*Carpenter.*) † "It is stated in the petition for establishing the Inebriate Asylum at Binghamton, New York, in 1857, that fifty-five per cent. of all our insanity and sixty-eight per cent. of all our idiocy springs directly or indirectly from inebriety alone."‡

The point to which attention should be directed is this—

* Journal of Psychological Medicine, April, 1869, p. 324, at the top.

† From the same.

‡ P. I. April, 1869, bottom of p. 330

Does there exist a peculiar form of disease of the brain caused by alcohol, and involving mental alienation, called by recent writers *methomania*, (by some *alcoholism*,) which renders the victim of it irresponsible for his acts during his paroxysms? "The late Dr. Woodward, of the Worcester Lunatic Asylum, wrote a pamphlet twenty years ago urging the establishment of an asylum for the cure of such inebriates, on the ground that they were the victims of a disease over which they had no control, and which rendered them irresponsible for their acts and dangerous if left at large." * It would be absurd to maintain, with Dr. Turner, that "every case of inebriety is a suicidal case of insanity, which needs the control and medical treatment of an asylum more than any other class of insane." It is enough to say that "pathological investigations show that the brain in such subjects is changed from a healthy to a diseased state by the action of alcohol; that healthy thoughts and healthy moral sentiments are not evolved by a diseased brain; that to its possessor we should attach no moral responsibility; that an habitual inebriate has always a diseased brain; that no will or agency of his can bring forth therefrom other than diseased mental and moral products; that a person governed by an uncontrollable appetite, or by any uncontrollable influence, is not a responsible being, and should be so treated." † There can be no doubt whatever, I think, "that the *methomaniac* is a victim of uncontrollable appetite, and dangerous both to himself and those about him; and hence a fit subject for the interference of the State." ‡

"In the year 1857, more than fifteen hundred medical men in the State of Massachusetts petitioned the legislature of that State in favor of the establishment of an inebriate asylum, in which they urge that, 'without such an institution, the physician has been compelled to turn from his patient discouraged, disheartened and defeated, and the victim of this painful malady has found a drunkard's grave. With this institution, we can save hundreds who are now crowding our insane

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* Misquoted from same at p. 340 about the middle of the page.

† From same p. 341, top. ‡ Idun p. 341 in the last line.

asylums, inundating our courts, dying in our prisons, and perishing in our streets.' " §

Some of the characteristic signs of "*methomania* are: First, periodic secret drinking to intoxication, attended by studied secrecy regarding it, and persistent denial of the act. Second, periodic solitary drinking to drunkenness, though not in secret, attended by the same determined denial of the act. Third, gulping down alcoholic liquors on all possible occasions to drunkenness, without regard to taste or quality." ‖

Considering, then, that sudden impulses and morbid perversion of the feelings and desires, so frequently seen in the insane, are peculiarly liable to appear in the *methomaniac*, and liable also, to impel the victim to acts of an appalling character, taking into view, moreover, "the total loss of self-control during the paroxysm; the disregard of all business and domestic obligations, with the prospective ruin of family; is it not a question for serious inquiry whether it would not be merciful to the patient and his family, as well as a matter of safety to them and the public, that he should be prevented from committing crimes and from squandering property, by placing him under restraint, rather than to allow him to incur the risks of trial for crime, and his family that of reduction to penury, by permitting him the liberty which his disease irresistibly impels him to abuse?" * (See chapters on "*Responsibility in Delirium Tremens*, and *Legal Relations of Drunkenness*," by the writer, in his *Am. Ed. of Guy's Principles of Forensic Medicine*, pp. 271, 275, etc., Harper's N. Y., 1845.)

Lucid Intervals.—It is well known that the law of periodicity governs mental diseases as well as all those belonging to the nervous class of affections to which these belong, but to what extent this law operates, has never been definitely ascertained. As connected with the doctrine of *lucid intervals*, so-called, it is a question of vast importance, for if it can be made to appear that, from any cause, the outward manifestations of the various forms of insanity may disappear, while

§ Misquoted from same p. 342 at the top.

‖ From same p. 347, near the bottom.

* From same p. 349, at the bottom.

the pathological condition of the brain, which caused them, remains, as is highly probable, then this whole question of lucid intervals requires reconsideration, and the doctrine of responsibility founded on it, needs also to be reconsidered. Let us see what *statistics* teach us on this subject. The statistical reports of our lunatic asylums are, at the best, very crude and inaccurate, with the exception, perhaps, of those of the Bloomingdale Asylum, N. Y., previous to 1845, as analyzed by Dr. Pliny Earle, then superintendent. By these it appears that, although the *admissions* or *cases* had been 2,308 up to that time, the number of *persons* was but 1,841. The number admitted twice each was 81, four times each 33, 5 times each 18, and thus the number diminishes until it ends with one patient who was admitted 22 times, and discharged cured every time ; of the 1,841 persons, 742, or 40.3 per cent. were cured, which is about the average.

These statistics would seem to show that, in a considerable proportion of cases, where the cure of insanity is supposed to be affected, the physical morbid condition, on which the disease originally depended, still remains, though latent, and ready to burst forth under the influence of numerous existing causes. Who can pronounce when the morbid condition of the brain disappears, or at what period there is no more danger of a return of the disease? Of course it is only in *mania* proper that there is a liability to a complete intermission of the symptoms.

Recoveries from insanity, then, may be said to be *complete* or *incomplete ;* and, of the latter, there are many who, although apparently rational, are never capable of returning to the sphere they formerly occupied, or of performing the duties which they previously fulfilled ; but in the vast majority of cases, if the treatment be commenced early, the patients will remain a longer or shorter time in such a state of susceptibility that the slightest causes may occasion replases ; and they preserve their sanity only by continuing to live where no mental agition or inquietude is likely to befall them and throw them back into their former state.

One of the most difficult and responsible duties for the

superintendent of an asylum to perform is to determine when a patient may be considered sufficiently restored to render his discharge safe and proper. It needs no statement to show that mistakes are often made on this point. As long as uneasy sensations, pains, or confusion in the head are complained of, I believe no confidence can be placed in the stability of the cure; but where all head symptoms have ceased, and the healthy functions of the different organs of the body are restored, while the mental manifestations are sound and healthy, the disease may be regarded as cured; and, if it appears again, we may regard it as a *recurrence* and *not a relapse;* but I am satisfied such cases are very rare indeed. The improbability of a *recurrence* of insanity increases with the length of time which has elapsed without any sign of renewed disease; and it is also greater in proportion to the completeness of the recovery. That the liability to *recurrence* or *relapse* in this disease is greater than in most others, is owing to the fact that a large proportion of insane patients have the diathesis of insanity, or a predisposition to the disease, constitutional and often hereditary.

Now, an expert may be called on to decide whether a civil or criminal act be committed during a *lucid interval*—a question impossible in many cases to be determined with anything like certainty. A complete remission of insanity can only be ascertained by attentive and reiterated observation. The subject would be divested of much of the difficulty in which it is involved were it not that the insane have great power of self-control, and that there are degrees of insanity, for the mind is rarely totally insane, and on all subjects. Judging of insanity, as of all other physical diseases, we should say that it is cured when all the symptoms by which it was manifested disappear, but as in *intermittents* and *epilepsy*, etc., the intermission may be considered a part of the disease. The patient should be regarded as laboring under the affection, although its leading characteristic symptoms are temporarily absent. No doubt there is a peculiar irritability or impressibility of the brain remaining, rendering the individual subject to extraordinary excitement from slight causes. Such provocations, as

Dr. Ray has observed, put an end to the temporary cure, by immediately reproducing that pathological condition of the brain, called *irritation*, which is by many supposed to be the essential cause of mental derangement, which absolves from all legal consequences of crime. The conclusion from this is, *that we ought never, perhaps, to convict for a crime committed during the lucid interval.* And all civil contracts made during the same should be regarded with great doubt and suspicion. As Dr. Ray has observed, "the difference between a person in the lucid interval and one who has never been insane is, that while in the latter the passions are excited to the highest degree of which they are capable in a state of health, though still more or less under his control, they produce in the former a pathological change, which deprives him of everything like moral liberty."

The able German writer, Hoffbauer, however, holds that there are lucid intervals, which Powell, Harlam, and others deny, and that, during their existence, a lunatic ought to be held responsible for his actions, and to be esteemed able to make legal contracts; he, however, observes that "we must not act too strictly upon this opinion, although it is generally correct; for however a lunatic may be in possession of his mental powers there may be still an inaccurate conception of his present state remaining, at least in connection with former events." Sir John Nicholl would decide *that* to be a lucid interval, during which the patient experienced no delusion, which we have seen to be a very imperfect test. The true principle to govern our decisions in these cases is doubtless, as Mittermaier the German jurist remarks, "to look at the personal character of the individual whose responsibility is in question, to the grade of his mental powers, to the notions by which he is governed, to his views of things, and, finally, to the course of his whole life, and the nature of the act with which he is charged."

MEDICO-LEGAL NOTES

ON THE CASE OF

EDWARD H. RULOFF;

WITH OBSERVATIONS UPON, AND MEASUREMENTS OF, HIS CRANIUM, BRAIN, ETC.

By GEORGE BURR, M. D., Binghamton, N. Y.

In rising to submit for your consideration what I am about to present, I do so with a certain degree of embarrassment, caused by a distrust of my own ability to do justice to your expectations, and an apprehension that my paper may not be sufficiently complete to make it anything like a suitable contribution to the objects of your Society. If what I am now about to lay before you shall be deemed worthy of your approval and commendation, I shall be abundantly compensated. If, on the other hand, its faults should be too glaring, and its deficiencies too apparent, I respectfully beg permission to bespeak, beforehand, your liberal indulgence.

Edward H. Ruloff was executed at Binghamton, N. Y., on the 18th day of May last (1871), for the murder of Frederick A. Mirrick.

In order the better to comprehend the various points of alleged error on the trial; the several medico-legal questions connected with the case, as well as the more satisfactorily to compare the peculiar characteristics of the man with the post-

* Read before the Society, September 14, 1871.

mortem examinations, and the size, form, and other peculiarities of the cranium and brain; the circumstances attending the homicide, and the previous history of Ruloff, should be briefly recapitulated. The circumstances of the murder for which he was convicted and executed are substantially as follows:

Mirrick was a clerk in the store of Halbert Brothers, dry-goods merchants, doing business in Binghamton, and, in company with a fellow-clerk, Gilbert S. Burrows, occupied the store as a sleeping-apartment—a bed or cot was so arranged, that it could readily be prepared for such a purpose after the business of the day had closed. On the morning of Wednesday, August 17, 1870, at about half-past one or two o'clock, these young men were awakened by some unusual noise, when they discovered three men standing near their bed. These men had burglariously entered the store, and had made some progress in removing packages of silk goods. Two, at least, of the men wore masks. The two clerks sprang from their bed, and a conflict immediately ensued—they attacking the burglars. Mirrick drew a pistol and snapped it twice at them, when two of them retreated down-stairs into a lower story. The third remained, and struck Burrows on the head with an iron chisel; but he was immediately thrown down by Burrows, who wrenched the chisel from his hand, and with it struck him a blow, inflicting a wound over the right eye. Mirrick likewise struck the prostrate burglar a blow with the round top of a stool, such as is used in counting-rooms; upon which he (the burglar) called loudly upon his retreating comrades for help. They immediately returned. The first, as he reached the head of the stairs coming from the lower story, was seized by Mirrick, and a violent struggle ensued, during which the burglar (now known to be Jarvis) was thrown upon his back over a counter, and Mirrick was above or over him, holding him in that position. As the other or third burglar came up the stairs, Burrows, supposing his first man disabled, advanced to meet him, and threw his chisel at him, which took effect upon his scalp. This burglar returned the assault by firing a pistol three times in quick succession; the last

shot, striking the bannister, caused slivers to fly into Burrows's face, when he, supposing himself seriously wounded, made no further attempts at resistance. The third burglar then passed directly to where Mirrick and Jarvis were engaged, and, seizing Mirrick's head by his left hand, drew it on one side, and discharged the contents of his pistol into its back part. The ball entered on the right of the occiput, passed into the cavity of the cranium, wounding the right lateral sinus, and a portion of it was afterward found upon the floor of the right lateral ventricle. Death ensued in about an hour. The burglars immediately fled. Meantime, Burrows had given the alarm, and officers and citizens rallied. Pursuit was instituted, but no trace of the burglars could be found. During the ensuing day the authorities, both of the county and city, were actively engaged; and measures were taken to secure, if possible, the arrest of the perpetrators of the crime. Patrols were stationed, during the succeeding night, to watch every avenue of egress from the town. Ruloff was arrested about one o'clock that night by the patrol stationed along the Erie Railway track, east of Binghamton. When first observed, he was stealthily making his way along the track in an easterly direction. He was ordered to halt several times, but refused; just then a train of cars, coming up, intercepted the approach of the patrol to him, and when the train had passed, he was nowhere to be seen. Two hours later he was discovered in an outhouse on premises adjoining the railway. He was then taken to town, and locked up in jail. The next day he was brought before the coroner's jury, when he gave his name as Charles Augustus; afterward it was George Williams. Up to this time he was unknown to every person present. While before the coroner's jury, and undergoing an examination, he was recognized as Edward H. Ruloff by Hon. Ransom Balcom, a justice of the Supreme Court, before whom, in former years, Ruloff had been on trial. After having been examined at some length, the coroner discharged him; but, soon after, new facts coming to light, he was pursued, retaken, and brought back to jail. The next morning (Friday) the bodies of two men were discovered floating in the Chenango River. On

bringing them to the shore, portions of false faces were found hanging by strings about their necks; one had received a wound, as from a blow upon the left side of the forehead; a ball of twine, corresponding in all respects with that with which the bundles of silk goods had been secured, was found in one of their pockets; the bits, with which the back-door of the store had been bored, were also found in another pocket; and other circumstances, which fully identified them as the bodies of two of the three perpetrators of the crime. In attempting to wade across the Chenango River, in their flight from the store, they had plunged into deep water, and had been drowned. During the day a photographic picture of the bodies, as they lay side by side, was taken, with a view to subsequent identification. Ruloff, on being brought to view the bodies, denied all acquaintance with or knowledge of them. The coroner now decided to hold him (Ruloff) in custody, to await the action of the next grand jury.

A bill of indictment was found against Ruloff at the September term of the Court of Oyer and Terminer. On being arraigned, he interposed the general plea of not guilty. The trial, on his own motion, was put over until the next January term.

At the ensuing January term of the Court of Oyer and Terminer held in and for the county of Broome, the trial took place: Hon. Henry Hogeboom, of the county of Columbia, and a justice of the Supreme Court, presiding. Hon. M. B. Champlain, Attorney-General, Peter W. Hopkins, Esq., District Attorney for the county of Broome, and Lewis Seymour, Esq., a counsellor of the Supreme Court, appeared for the people; and George Becker and N. D. Whitney, Esqrs., of Binghamton, and Hon. Charles L. Beale, of Columbia county, for the prisoner. The trial continued for eight days, at the end of which the jury returned a verdict of guilty of murder in the first degree; and the prisoner was sentenced to be hanged on the 3d day of March following. On the 25th day of January, 1871, Judge Hogeboom allowed a writ of error, which brought the case before the General Term of the Supreme Court, held at Albany on the 7th day of February; but,

in allowing the writ of error, Judge Hogeboom refused to grant a stay of proceedings. The case was argued at this General Term of the Supreme Court, and the judgment and sentence of the Broome Oyer and Terminer were affirmed. On the 28th day of February, three days before the time appointed for the execution, Judge Rapallo, of the Court of Appeals, allowed a further writ of error, and a stay of proceedings, thus bringing the case before that tribunal. The Court of Appeals sustained the finding of the courts below, and Ruloff was taken before the General Term of the Supreme Court in session at Elmira in April, and was there sentenced to be hanged on the 18th day of May. The sentence was carried into effect on that day, and Ruloff paid the penalty of his crime with his life.

The points of alleged error upon which the case went up to the Court of Appeals were of a purely legal character, and do not involve questions in medical or physiological science. There was no pretence of insanity at the trial—no question as to the effect of the pistol-shot wound in causing the death of Mirrick.

It may not, however, be entirely useless to refer to at least two of the points of alleged error which the plaintiff in error (Ruloff) urged before the Supreme Court and the Court of Appeals. It will be remembered that the two clerks began the affray. When first awakened, they discovered the three burglars standing near the bed, and they at once attacked them, Mirrick snapping his pistol two or three times. Two of the burglars retreated down-stairs, the other returned the assault by striking Burrows on the head with a chisel. It was argued by the prisoner's counsel that the subsequent killing could not be, as the jury had found, "murder in the first degree," but that at most it was one of the lower grades of manslaughter; that at the time Mirrick himself was engaged in "a felonious attempt unnecessarily to kill an intercepted felon, and was doing him great bodily harm; that the killing was done in resisting such attempt, without felonious intent," and that "in making this attempt, Mirrick was *himself* a wrong-doer, and not under the full protection of the law."

During the trial, the counsel for the prisoner requested the judge to charge in favor of this view, of the transaction as a matter of law; this his Honor declined to do, holding that they were questions of fact upon which the jury must find.

Another point was somewhat novel. It was important that the bodies of the two drowned men should be identified. No one who saw them, recognized either one. They had lain in the water two days; were now exposed to a warm atmosphere, and decomposition was rapidly progressing; and unless their present appearance could be preserved, in a few hours all hopes of recognition would be gone. A photograph picture was therefore taken of the bodies, which, by means of a stereoscopic instrument, enabled acquaintances subsequently to recognize in them the persons of Jarvis and Dexter, both ascertained to be comrades and associates of Ruloff. Counsel for the prisoner objected on the trial to any evidence of identification being received, founded upon an examination of the pictures. The objection was overruled, and exception taken. In this case there were other circumstances which corroborated the testimony of the witnesses who identified the bodies from viewing the pictures, and which established their identity beyond all doubt; but as this kind of evidence is quite likely hereafter to be employed in various ways upon the trial of cases, the remarks of Judge Potter, one of the judges of the Supreme Court, holding the General Term, in discussing the point, may very properly be quoted. He says: "It is the every-day practice to use the discoveries in science to aid in the investigation of truth. As well might we deny the use of the compass to the surveyor or mariner; the mirror to the truthful reflection of images; or spectacles to aid the failing sight, as to deny in this day of advanced science the correctness, in greater or less degree depending upon the perfection of the machine, and the skillful admission of light to the photographic instrument, its power to produce likenesses; and upon the principle, also, that a sworn copy can be proved when the original is lost or cannot be produced, this evidence was admissible." As germane to this point, I add the follow-

ing, taken from the New York *Evening Post*, which, although a newspaper paragraph, is somewhat significant of the future employment of photographs upon the witness-stand:

"An Australian gentleman, examining a mining claim, was seized, stripped, and covered with tar and wool. He went and got himself photographed in this guise, and sued his assailants for two thousand dollars' damages, putting in his picture as evidence."

All the points of alleged error made in the case of Ruloff, as is well known, were overruled by the Court of Appeals, and the decisions and rulings of Judge Hogeboom on the trial confirmed, as also the finding of the jury. It is proper now to state that Ruloff, before his execution, admitted that the bodies found in the Chenango river were those of Jarvis and Dexter; that he had been associated with them for years; that he was the third man present in the store that night; and that he fired the shot which was fatal to Mirrick. He, however, disclaimed all intention of murder on entering the store, and declared that, if the young men had kept quiet, they would not have been harmed.

This admission of Ruloff of the correctness of all the proceedings in his case, while it ought not perhaps to lead us to believe in the infallibility of our courts, yet it should inspire us with confidence in their ability to ferret out crime, and in the correctness of their findings, when the law is administered by an able and upright judge, and the facts are passed upon by a conscientious and fearless jury.

Long before the murder of Mirrick, Ruloff had attained an extensive and wide-spread notoriety for crime. Not only in the public estimation was he thus connected, but in the recorded judicial proceedings of our State his name stands conspicuous. Nearly thirty years ago (in 1842) he first appeared in the vicinity of Ithaca, in the county of Tompkins. He here engaged in various avocations—laboring, teaching school, studying medicine with a botanic physician, and finally practising in the neighborhood as a botanic physician. He also gave some lectures on phrenology. He married a young lady of that vicinity, and in due time a daughter was added to his

household. Both his wife and child suddenly disappeared. Neither has been seen or heard from since the 24th day of June, 1845. The accounts which Ruloff gave for their disappearance were contradictory and evasive. It was known that disputes and bad feeling had been engendered between him and his wife, and her family, and it soon came to be generally believed that he had murdered his wife and child, and that he had sunk their bodies in the waters of the Cayuga lake. That belief prevails to this day.

Ruloff was soon after arrested for the supposed crime. An indictment for forcibly abducting and imprisoning his wife was found against him, and in January, 1846, he was found guilty of this offence and sentenced to the State-prison at Auburn for ten years. This term he served out in prison. At the close of his term of imprisonment, and while in the office of the warden, before he had passed outside the walls, he was again arrested by the sheriff of Tompkins county on an indictment charging him with the murder of his wife, and he was at once taken back to the Tompkins county jail. This indictment was never brought to trial, a *nolle prosequi* having been entered in the matter; but in June following (1856), an indictment for the murder of his child was found against him, upon which he was arraigned and pleaded not guilty. On application to the Supreme Court, it appearing that an impartial trial could not be obtained in the county of Tompkins, an order was made that the indictment be tried in the county of Tioga. The cause (having previously been removed from the Oyer and Terminer to the Supreme Court by writ of *certiorari*) came on for trial at the Tioga Circuit, before the Hon. Charles Mason, one of the justices of the Supreme Court, on the 28th day of October, 1856.—(*Vide* 3 *Parker's Criminal Reports*, p. 401.) Upon this trial the prosecution relied upon certain facts and circumstances to make out their case, they having no proof by direct evidence that the child was dead or had been murdered, or that her dead body had ever been found or seen by any one. The jury, instructed by the court that the *corpus delicti*, the body of the crime, could be "established by circumstances proved so strong and intense as to produce the

full certainty of death," brought in a verdict of guilty, and Ruloff was sentenced to be hanged.

Thus, according to the finding of the several juries engaged in this case, the anomalous fact was established that Ruloff abducted his wife and murdered his child, although they both disappeared at the same time, and neither has been heard from since.

The General Term of the Supreme court of the Sixth Judicial District, composed of Judges Mason, Gray, and Balcom, affirmed the rulings and findings of the Tioga Circuit, Judge Balcom dissenting; and at a subsequent term of the same court, Ruloff made a motion for a stay of proceedings, which he argued in person, but which was denied, and he was again sentenced to be hanged. A stay of proceedings was, however, at length obtained by his counsel, and a writ of error allowed, which brought the case to the Court of Appeals, where the verdict and judgment of the Supreme Court were set aside, and a new trial ordered.

It was pending these proceedings, while lying in jail at Ithaca, that Ruloff became acquainted with young Jarvis, then a sprightly lad, and also with his mother, the wife of the jailer, over both of whom Ruloff obtained a most powerful and fatal influence, and by whose agency it is supposed he was enabled to break jail and escape. This he did, and while a fugitive, and wandering about the hills of Western Pennsylvania, he froze his foot, causing the deformity which connected him with so much certainty with the crime at Binghamton.

Ruloff was in time retaken and brought back to Ithaca. About this time the decision of the Court of Appeals having been made known, the public indignation culminated in a determination on a day appointed to force the jail and to inflict upon Ruloff the punishment which they believed he had evaded by the technicalities of the law. The day before the appointed time, the sheriff quietly removed him to the jail of Cayuga county, where he remained until the order for his release was received.

At this result the disappointment and excitement of the people of Tompkins county and vicinity became intense.

They believed that a felon had escaped a just and well-deserved punishment. And when the enormity of the crime was remembered, no less than the murder of his own wife and child, the successful concealment of the bodies, the tact and ability he had displayed in the various legal proceedings, his reputation for scholastic attainments, and the success with which they believed justice had been foiled, all conspired to produce a degree of exasperation throughout the entire community heretofore unequalled. With the lapse of years this excitement had died away, but the deep conviction of Ruloff's guilt remained. When, therefore, he appeared again upon the scene as a participant in the murder of Mirrick, at Binghamton, the popular excitement was renewed with the utmost fury. The public sentiment now demanded that justice should not again be evaded; but that the law should be vindicated and its penalties paid. And when subsequent events connected with his life were made known, exaggerated and colored as they undoubtedly were by the newspaper press, he came to be regarded as a criminal of the deepest dye; while his attainments in learning, and the intellectual ability he had displayed in various ways—his plans, his successes, his trials, his escapes—had in the imagination of the people surrounded his history with a tinge of romance not inferior to that of Eugene Aram.

After Ruloff's release from the custody of the sheriff of Tompkins county, in 1860, he seems to have at once fallen into a life of criminal associations and practices. If we can believe his own declaration, however, he desired to pursue an honorable course, and was actually engaged in teaching in North Carolina, when a cry of distress from Jarvis, who was in jail at Buffalo, induced him to give up his situation at the South, and go to the relief of his former friend.

From this time the associations of the two were intimate. They established their headquarters in the city of New York, whence they made incursions upon various parts of the country for the purposes of plunder, and to obtain the means of support. Ruloff also was engaged upon the work on philology, which he had projected, and of the success of which he seems to have had the most extravagant anticipations. He

was, however, unfortunate in being frequently caught while making his forays upon the public. During the ten years from 1860 to 1870, under various *aliases*, he served terms of imprisonment in the State-prison at Sing Sing, in the Connecticut State-prison at Wethersfield, and in the New Hampshire State-prison at Concord.

Ruloff, as has been stated, was executed by hanging, on the 18th day of May, 1871. The mode selected was by jerking him up while standing upon his feet, by letting fall a heavy weight.

For the observations made at the time of the execution, the post-mortem appearances, the preparation of the specimen, the measurements of the cranium and face, and the notes upon the brain, I am indebted to my son, Daniel S. Burr, M. D., who was present at the execution, and who conducted the examinations with accuracy and care.

A few involuntary movements, of the arms particularly, immediately followed Ruloff's suspension; but there was no struggling, no convulsions, no discoloration or distortion of the features, and in fifteen minutes life was extinct. Thirty hours after death, the head was severed from the body by dividing the neck between the fifth and sixth cervical vertebræ. No examination of the body was had.

The Neck.—A dissection of the neck was first made. The mark of the cord around the neck was distinct. There was no ecchymosis in the subcutaneous tissue; but the skin where it had been compressed by the cord had become hardened, and somewhat resembled a narrow strip of parchment. The vertebræ were all entire, the odontoid process was unbroken, and the transverse ligament was not ruptured.

The Head.—The countenance was pale, no tumefaction of the face. The lens of the right eye was found to be fractured. The brain was removed and weighed, the soft parts dissected away, when the bones of the head were subjected to the process of maceration, and a preparation has since been made.

The Cranium.—The outlines of the cranium are not unsymmetrical. The outer surface is uniform, and presents the usual regular convexity, with the exception of several prominent points. The occipital and two parietal protuberances

are unusually large, and the summit in front of the vertex is markedly prominent.

In size, the cranium is much beyond the average, as will be seen by reference to the several measurements hereinafter given. In shape it is more circular than the best-formed crania. There is great breadth in the posterior and inferior regions. The base is also broad. The general expression which an external view gives, is that of a dull, heavy, and somewhat coarse organization. The forehead is not high, and is retreating, although the facial angle is not lessened, owing to the projecting of the superciliary ridges. On sawing through to remove the calvarium, the unusual thickness of the walls came under notice. The thickest portion is over the left orbit, and measures half an inch in thickness, the thinnest is in the right temporal region, where its thickness is one-quarter of an inch.

The internal surface of the walls of the cranium presents some points of interest. It will be noticed that this surface is not as distinctly indented by the convolutions of the brain as is usual; neither is it as regularly concave or dome-like. That portion which is over the anterior fossa is very thick, and runs down from the groove for the longitudinal sinus in a straight, smooth plane, like the roof of a house.

While the base of the cranium and the inferior portion of its sides are diaphanous, and transmit a certain degree of light, the upper portion is comparatively opaque. This may be regarded as an indication that the lower convolutions and inferior portions of the brain were more active than the superior.

The following are the measurements of the cranium made, following the suggestions of Dr. J. Aitken Meigs,* viz.:

1. Occipito-frontal or longitudinal diameter ..... $7\frac{11}{16}$ inches.
2. Frontal or anterior transverse diameter..... $5\frac{3}{16}$ "
3. Depth of supra-orbital plates..... $1\frac{15}{16}$ "
4. Frontal altitude..... $2\frac{7}{16}$ "
5. Bi-temporal diameter..... $6\frac{3}{16}$ "
6. Parietal altitude, or height of middle lobes..... $4\frac{6}{16}$ "

* "The Mensuration of the Human Skull," by J. Aitken Meigs, M. D., etc., etc. (Reprinted from the North American Medico-Chirurgical Review, September, 1861.) Philadelphia: J. B. Lippincott & Co., 1861.

Fig. 1.

Fig 2.

7.	Antero-posterior diameter or length of middle lobes	$2\frac{1}{4}$ inches.
8.	Bi-parietal diameter	6 "
9.	Posterior transverse diameter	$4\frac{14}{16}$ "
11.	Vertical diameter, or depth of skull	$5\frac{10}{16}$ "
14.	Occipito-frontal arch	$15\frac{10}{16}$ "
15.	Frontal arch	$12\frac{14}{16}$ "
16.	Parietal arch	$14\frac{6}{16}$ "
17.	Occipital arch	$11\frac{6}{16}$ "
18.	Horizontal periphery	$22\frac{6}{16}$ "
19.	Meato-frontal diameter	$4\frac{7}{16}$
20.	Meato-parietal diameter	$3\frac{12}{16}$ "
21.	Meato-occipital diameter	$4\frac{5}{16}$ "
22.	Meato-malar diameter	$3\frac{3}{16}$ "
23.	Meato-alveolar diameter	$4\frac{6}{16}$ "
24.	Meato-mental diameter	5 "
40.	Inter-auricular diameter, or breadth of base	$4\frac{4}{16}$ "
45.	Position of the foramen magnum :	
	a. From anterior margin of foramen to incisor alveoli	$3\frac{1}{4}$ "
	b. From posterior margin to the occiput	$1\frac{10}{16}$ "
46.	Antero-posterior diameter of the foramen magnum	$1\frac{14}{16}$ "
47.	Transverse diameter of the foramen magnum	$1\frac{4}{16}$ "
48.	Shape of the foramen magnum.	

The size or capacity of the cavity of the cranium has been estimated according to the suggestions of Dr. Meigs, by multiplying certain measurements of different portions of the external cranium together, with the following result :

Anterior fossa	$24\frac{1}{2}$	cubic inches
Middle fossa	$54\frac{3}{4}$	" "
Posterior fossa	$66\frac{1}{10}$	" "
Total	$145\frac{35}{100}$	" "

This, at best, is only an approximation to the actual size of the cavity, and the total seems too large. A careful revision of the calculations discovers no error, and the result is given as above.

A further calculation was made by multiplying the average length, the average breadth, and the average height of the skull together, and the result by this calculation gave, as the size of the cranial cavity, 140 cubic inches.

It must be remembered, however, that these measurements are external, and that, on account of the unusual thickness of the skull (twice, at least, that of ordinary skulls), they would indicate a larger cavity than actually existed.

The entire cavity was subsequently filled with the meal of Indian corn ; this was poured out into a square box, and measured 109 cubic inches. This is probably a little below the actual capacity of Ruloff's cranium, as the meal may not have filled up every part of the cavity. In estimating its size at 120 cubic inches, we shall not be far from its true measurement.

The Face.—The outlines of the face are broad and angular and, but for the projection of the chin, the facial line would be nearly perpendicular. The zygomatic arches are wide apart ; the cheek-bones prominent ; the nasal bones short ; the upper jaw not projecting, but broad ; the lower jaw likewise broad ; the chin square and prominent ; the rami strong, and standing at nearly a right angle with the base. But for the loss of the molar teeth, the lower jaw would be large and stout. It is likewise deeply indented by the action of its powerful muscles.

The following measurements of the face were made :

25. Naso-alveolar diameter.....2$\frac{4}{16}$ inches.
26. Naso-mental diameter, or length of face.....4$\frac{12}{16}$ "
27. Bi-zygomatic diameter, or breadth of face.....5$\frac{1}{16}$ "
28. Depth of the temporo-zygomatic fossa.....1 inch.
29. Height of the anterior opening of the orbit.....1$\frac{8}{16}$ inches.
30. Breadth " " " " .....1$\frac{10}{16}$ "
31. Direction of the transverse axis of the anterior opening of the orbit—the outer extremity inclined downward.
32. Shape of the anterior opening of the orbit—nearly square.
33. Inter-orbital diameter, or breadth of nose at the root.....1$\frac{6}{16}$ "
34. Distance between the external angular processes.....4$\frac{7}{16}$ "
35. Suborbital diameter, or breadth of the superior maxilla.....3$\frac{13}{16}$ "
36. Length of nose.....2$\frac{4}{16}$ "
37. Breadth of nasal orifice.....1$\frac{1}{16}$ "
38. Circumference of the upper jaw.....
39. Circumference of the lower jaw.....
41. Length of the hard palate.....1$\frac{13}{16}$ "
42. Depth " " .....$\frac{8}{16}$ "
43. Breadth " " .....1$\frac{8}{16}$ "

The weight of all the bones of the head is 2 lbs. 8 oz. 1$\frac{1}{2}$ drs. avoirdupois.

Of the Brain.—The brain was removed from the cranial cavity within thirty-six hours after death. There was no apoplectic extravasation. The convolutions were numerous and

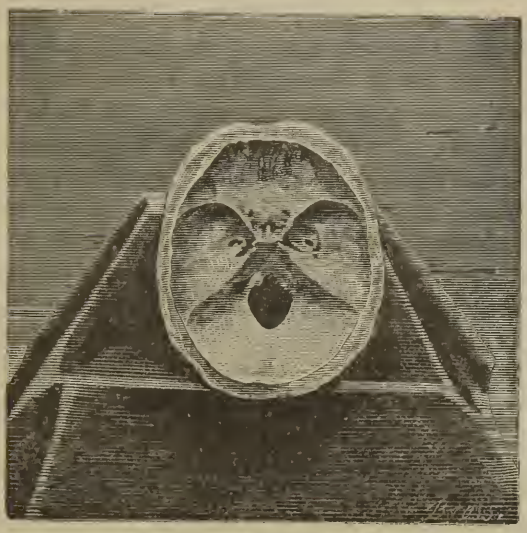

Fig. 3.

Fig. 4.

very distinct. The entire encephalon weighed fifty-nine ounces avoirdupois.

Weight of the cerebrum	$50\frac{4}{7}$ ounces.
" " cerebellum, pons Varolii, and medulla oblongata	$8\frac{3}{7}$ "
Relative weight of cerebellum, etc., to cerebrum	1 to 7 "

After having been immersed in alcohol for several weeks, the following observations upon the brain were made:

Depth of fissure of Sylvius	$\frac{7}{8}$ of an inch.
" of external layer of vesicular matter or cortical substance	$\frac{3}{10}$ "
" of space between convolutions at vertex	$\frac{5}{8}$ "

The largest development of brain at the cavity of the cranium, and the relative proportions of the mass itself would indicate, was in the posterior and inferior regions. The proportion between the weight of the cerebrum and the remaining divisions of the encephalon was less than the average; or in other words, the relative weight of the cerebellum, pons Varolii, and medulla oblongata, to the cerebrum in Ruloff's brain, was as 1 to 7; while the average proportion, as made out by Prof. Reid, in brains of persons between fifty and sixty years of age, seventeen having been examined, was as 1 to $8\frac{1}{8}$.

The proportion of the weight of the brain to that of the body was as 1 to 46.

In appearance, Ruloff was "a man about five feet eight inches in height. . . . Mouth rather large, with closely-compressed lips; nose small; eyes dark gray, with large pupils and steady; the whole expression of the face concentrated, showing great self-control and power of attention; shoulders broad, chest full, in fact a compact, vigorous frame, small hands, and well-shaped arms."* His hair was coarse, standing out from the scalp, and coming low down upon the forehead.

His countenance, when in repose, was stolid and indifferent; when giving vent to his frequent ebullitions of passion, it was repulsive and forbidding; but, when animated by some subject in which he took an interest, like his favorite theme phi-

* Report of Drs. Gray and Vanderpoel to Governor Hoffman.

lology, his features assumed an active, lively, and intelligent expression. His voice in ordinary conversation, and when in an undertone, was agreeable; but when speaking, as in addressing the court, which he frequently did during his trial, it was shrill and harsh. In walking he stooped forward, and had a shambling, shuffling gait, such as he would be very likely to acquire during his long confinements in the various prisons in which he had been incarcerated.

His entire organization, as has been remarked of the cranium, was coarse. It was not without vigor or powers of endurance, but its material was not of the best quality, and was wanting in that fine finish which is now regarded as the best development of the human structure. In some respects his organization resembled that deteriorated condition or that low type of *physique* which has been declared by Mr. Bruce Thomson to be characteristic of criminals as a class.

It is extremely difficult to analyze or even to comprehend all the points in the character of Ruloff; there were so many antagonistic features, and so many opposing traits. In fact, he seemed to have possessed two distinct natures. In one he was a pleasant, sprightly, and intelligent gentleman; in the other he was a coarse, violent, and repulsive *brute*. In his better nature, his aspirations were honorable and praiseworthy. He wished, as he not unfrequently expressed himself, to be a gentleman, and respected by his fellow-men. He was ambitious of praise and consideration. In his other phase, he was regardless of all consequences, opinionated, self-willed, and determined in his own way, without the slightest deference to the opinions of others. In the struggles between these two natures, the worse appears generally to have been victorious. This must have been the case at the beginning of his career, so far as it has been made public. A waif upon the tide of human life, he drifted to a remote town in the county of Tompkins—inexperienced, and without fixed plans for the future. He had a taste for literary and scientific pursuits—wished to be a gentleman, and desired to follow a respectable calling, and so, without much credit to his sagacity or good judgment, he chose to become a *botanic* physician. He married, and

commenced practice in that vicinity. As his experience enlarged, and his true position began to be understood by himself, he became dissatisfied, and would have sought a wider and a different sphere of operations. In this, he was opposed by his wife and her family, who doubtless had seen more or less of his bad nature cropping out. Ruloff now began to regard his wife as an obstacle to his plans, an impediment in the way of his success; and soon after, by his own hand, her lifeless body, and probably that of their child, found a resting-place at the bottom of the Cayuga lake.

In such a fearful manner first openly appeared that prominent propensity in Ruloff's character, which impelled him to remove all obstacles in his way at the sacrifice even of human life, or that induced him, as will be hereinafter claimed, to plunder and steal, in order to promote his favorite plans and undertakings. This was a prominent feature in his character.

Ruloff had a strong mental organization, and many of the operations of his mind were performed with vigor and force. His perceptions were not acute nor active; on the contrary, they were dull, and at times almost stupidly so. In an emergency he was slow to perceive or to appreciate the circumstances surrounding him, and consequently, if pursuit was instituted after any of their depredations, he would be arrested and convicted, as was the case in Dutchess county, in Connecticut, and in New Hampshire, while his associates escaped. The circumstances attending his arrest at Binghamton strikingly illustrate this stupidity of character, if it may be so termed. The murder of Mirrick took place between two and three o'clock on the morning of August 17th. During the ensuing day active and effective measures were taken to capture the perpetrators of the crime. The next night every avenue out of town was strictly guarded by patrols under the direction of the police, the Erie Railway track being one of them. The patrol on this track brought to several persons during the night, and among them a young medical gentleman, then as now a resident of the city of New York, but who, born and bred in Binghamton, was home on a short visit to his parents; and, on the night in question, returning at a late

hour, having been out on an errand not dissimilar to that for which "Leander swam the Hellespont," found himself suddenly surrounded by a body of armed young men, seized by the collar, and ordered to surrender. A very few words of explanation to his old associates and playfellows of course released the doctor. It was before the face of this patrol that Ruloff came shambling along apparently unsuspicious that any watch or guard would be placed over the thoroughfares of the town. And when released by the coroner, knowing as he did his own participation in the crime, instead of taking measures to elude pursuit in case any circumstance should be brought to light against him, he openly took the railroad-track again, and as a matter of course was easily followed and retaken. A similar unaccountable course of conduct and numerous contradictory explanations characterized him after the disappearance of his wife and child. Whatever intellectual ability may be hereafter claimed for Ruloff, it is certain that he was not an expert in concealing crime, or in eluding the vigilance of officers and detectives.

Ruloff's intellect was of a superior order. It may have been somewhat overrated in the estimation of many, yet I am quite sure his intellectual capacity would compare favorably with the best minds. It was more in abstract pursuits—in metaphysics, in discussing some subtle philosophical proposition, and in certain branches of science—that his mind displayed its vigor, rather than in subjects of a more practical character, or that had reference to the present time. Like every one else, perhaps, his intellect had its range, beyond which it exhibited no remarkable features.

When about sixteen years of age he says of himself he first became interested in the study of languages. From that time, under every circumstance, during his prison-life, and even under sentence of death, it was his favorite and all-absorbing pursuit. The history of the formation and the philosophy of various languages, especially the Greek, were his constant study, and he acquired an extensive and critical knowledge, not only of the Greek and Latin, but also of the more ancient as well as the modern European tongues. His favorite study,

however, was the Greek, and his proficiency and familiarity with this language and its literature excited the surprise and admiration of his better-educated visitors.

While a convict in the Auburn prison, he prepared a criticism "upon parts of Prof. Taylor Lewis's edition of one of Plato's dialogues," which he sent to a gentleman then, I believe, a member of the Theological Seminary, but who is now a professor in Amherst College. This criticism having been seen by Prof. R. H. Mather, likewise of Amherst College, induced him, while at Binghamton, to seek an interview with Ruloff, which took place the day succeeding his final sentence. The following extract from the published account of the interview, as related by Prof. Mather, is most certainly conclusive as to the attainments and scholarship of Ruloff in the languages :

"The next morning, about nine o'clock, the advocate and I went down to the prison, and the gentlemanly high-sheriff at once consented to the interview, if Ruloff were willing. The doomed man at first refused, as he had done of late to all visitors, but, when told that I was a student and teacher of Greek, he at once consented. He approached the heavy latticed iron door, and asked very politely if I could remain long enough to learn something of the beauties of his theory of language. Without replying, I turned to the officer and asked if I might be permitted to go into the cell. He said yes, and proceeded to unlock the massive padlocks. It was a long, narrow, granite-built room, but high, and furnished with plenty of light and pure air. As we entered, Ruloff approached with two dilapidated chairs, and, with the most winning courtesy, asked us to be seated, and offered to relieve me of my hat. He sat down on his rude pallet opposite me, and I told him that I had seen the criticism referred to above, and that I had desired to learn how he had acquired his knowledge of the old languages. He replied, with a smile, that he had obtained it all by honest work; that he had never been in a college or university, but that from boyhood he had had a most intense interest in the beauty and strength of the Greek tongue. He complained that he had been laughed at by the public as a

superficial scholar, and wanted me to satisfy myself on that, and then hear what he had to say about the formation of language. I replied that as we had no text-books I could not examine him, to which he rejoined that many of the classical authors he knew by heart, and would try and repeat portions if I would suggest where he should begin. Thinking that something from the 'Memorabilia' might be appropriate to his present needs, I suggested the third chapter, first book, where the sentiments of Socrates with reference to God and duty in their purity and exaltation approach so nearly to Biblical revelation; and he at once gave me the Greek. Other parts of the same work, as well as the 'Iliad' of Homer and some of the plays of Sophocles, he showed great familiarity with. Then, in order to show his thoroughness, he criticised the common rendering of certain passages, and he did it with such subtlety, and discrimination, and elegance, as to show that his critical study of these nicer points was more remarkable than his powers of memory; in fact, I should say that subtlety of analysis and of reasoning was the marked characteristic of his mind. On one or two passages of Homer, in particular, he showed great acuteness of criticism, and a most thorough appreciation of the grandeur of the sentiment. One or two renderings of President Felton he opposed most vigorously, and, when I supported the common version, he quoted from a vast range of classics to confirm his view."

Ruloff possessed the power of adapting himself to different pursuits with facility, and of employing his intellect in various ways. While in prison at Auburn he was most of the time engaged in the carpet-shop of J. Barber & Co.," where he was employed," writes Hiram Whiting, Esq., the clerk, "in making patterns and designs for carpets. He was successful in this business, being industrious and ingenious, exhibiting much capacity, tact, and skill."

Ruloff, I believe, had never been admitted to practise in any of our courts, and was not consequently an attorney and counsellor. He, however, was well versed in the law applicable to the trial of criminal cases, in the rules of evidence, etc. On his trial for the murder of Mirrick, he in person cross-ex-

amined many of the witnesses, made objections to the course of the prosecution, and argued his points before the court. In some of the proceedings connected with the disappearance of his wife and child, he appeared without counsel, prepared his papers, made his motions, and argued them with ability and tact. In 1869, under the name of James E. Dalton, he appeared before the Cortland County Court, as counsel for Dexter, who had been arrested and held in jail for stealing silks. He there made an argument in behalf of his associate, and was successful in obtaining his discharge.

His answers to the commissioners sent to examine him, by Governor Hoffman, show extensive thought and a matured mind. He spoke of his reading works on German metaphysics, and his acceptance of the doctrines of Kant and Comte, with the assurance of one who was conscious of his intellectual strength; and he avoided with skill the questions designed to throw doubt upon the opinions he had embraced.

Ruloff's emotional nature was not of the highest order. If he had at any time entertained aspirations for fame and distinction, for an honorable and elevated position in life, he by some passionate outbreak destroyed his opportunities, and disappointed his desires. The circumstances, of which he claimed to have been the victim all his life, are attributable to this cause. He was subject to violent paroxysms of anger, revenge, jealousy, and distrust, before which his judgment and will were powerless. He worshipped no Supreme Being; venerated nothing, unless it may have been an old Greek book, and acknowledged no accountability to a higher power. He was apparently insensible to the consequences of his acts. Never a word of regret or compunction of conscience, so far as is known, escaped his lips. In this respect he verified the observations of Dr. Despine, as quoted by Mr. Bruce Thomson: "In reading," remarks Dr. Despine, "without any preconceived views, the reports of criminal trials, I was struck with the constant recurrence, among those who had committed crimes in cold blood, of a mental condition marked by the absence of all moral remonstrance, before the act premeditated, and the absence, not less complete, of all remorse after

the accomplishment thereof." Mr. Thomson makes the further remark as characteristic of criminals of Scotland: "Besides the absence of moral sense, the want of manly courage, and of confidence in each other, and a habit of universal lying, may be mentioned as characteristic of this class; and nothing affords stronger proof of their moral insensibility, than the fact of their not being amenable to the teachings of chaplains and other instructors." *

Ruloff would have been a perfect specimen of this class in the hands of Mr. Thomson. He distrusted everybody, and was himself faithless toward all, unless Jarvis be an exception. Under the most solemn circumstances, just before receiving final sentence of death, he filed a lying paper with the court, and, as for relenting, or sorrow, or desire for religious consolation, he up to the moment of his death strenuously resisted all approaches from the clergy, and would not consent that even a single prayer should be made in his behalf.

His ordinary conversation and mode of expressing himself was of a low order—very profane, and in other respects not choice—yet he could immediately assume the bearing and manners of a cultivated gentleman, with language and expressions of the most finished character.

His will was strong and determined. No better illustration of this feature in his character can be given than his reply to the following question addressed to him by the commissioners:

Question. "Would the fact of another existence, and that existence one of rewards and punishments for your conduct in this life, make any difference to you in regard to your acts?"

Answer. "No; I should do as I intended, without regard to the existence of a God or a devil, a heaven or a hell; I have felt this pride during my whole life. I never wished to get any thing out of anybody."

In his domestic habits Ruloff was amiable, quiet, and retiring, laboriously studious, and as Prof. Leurio, 170 Third avenue, was the favorite of all the children in the vicinity, for

* The Journal of Psychological Medicine for January, 1871.

whom he always had a pleasant word, and ofttimes presents of toys, candies, etc.

Was Ruloff of Sound Mind?—Much discussion has been excited upon the subject of Ruloff's sanity. So singular had been his conduct, and so remarkable his bearing while under sentence of death, that, in the judgment of many, he could only be regarded as of unsound mind. He himself, however, stoutly resisted every such imputation. When the commissioners appointed by Governor Hoffman to visit him, and to report upon his condition, announced to him the object of their visit, he at once exclaimed: "Gentlemen, this is no work of mine. I do not pretend to be either insane or an idiot. I am feeble in body, as you may see, but this has not affected my mind. The proposal of a commission is no move of mine." To a friend who intimated to him that he thought that he (Ruloff) might be a *little cracked* upon the subject of philology, he replied: "Well, I am not half as big a fool as you are for thinking so."

There was no plea of insanity interposed upon his trial; the defence resting upon the supposed inability of the prosecution to connect Ruloff with the perpetrators of the murder. In fact, the circumstances of his arrest, and his subsequent demeanor, would have precluded all expectations of an acquittal. He was arrested, it will be recollected, making his way stealthily out of town in the middle of the night, eluding the vigilance of officers. When questioned as to where he was from, and where he was going, he stated that he had come from Rochester, and had been put off the cars, for want of money, at Union, nine miles west of Binghamton, and was walking to New York City; and, when taken to view the bodies of Jarvis and Dexter, he denied all acquaintance with or knowledge of them. This course indicated a sense of guilt, a consciousness of crime, and a desire to avoid its consequences, which is entirely inconsistent with the irresponsibility of an insane person.

There are, however, many features in Ruloff's case that go to establish the conviction that his mind was not evenly balanced, but that, in many of its operations, it had become dis-

ordered and unsound. As the body, by confinement in a single posture for a length of time, becomes distorted and contracted, and loses the power of regaining its former symmetry; so the mind, when long directed to any one pursuit, and when held in one channel of intense thought, loses its power of true perception; the reasoning powers become subordinate to the one controlling passion or thought, and mental irregularity and unsoundness ensue.

Such, there is reason to believe, has been the condition of Ruloff's mind. In early life he contracted a fondness for the study of ancient languages; this fondness grew into a passion with him, and he surrendered himself to it. Then came distorted visions. In one of his replies to the commissioners, he says: "For over thirty years I have been impressed with the fact that there was something in language that I was to discover." As his mind became more and more intensified upon the subject, the delusion came that he had made his great discovery. That delusion continued. He told Prof. Mather that he "felt convinced that his theory of language was a special revelation to him." He could see nothing anywhere but his favorite theme. "He maintained that all the fictions of Greek and Roman mythology covered some great philological truths."

That Ruloff had the most extravagant expectations of the value of his work, is illustrated by the fact that in 1868, as Prof. Leurio, he attended a convention of philologists, at Poughkeepsie, offered his book for the approval of the members, and demanded five hundred thousand dollars for his discovery and copyright. Mr. E. Jakobs, of 170 Third avenue, informs me that Ruloff often at home expressed the most sanguine anticipation of the results of his labors, and the large expectations he entertained of pecuniary returns when his work should be completed, and often remarked that he should then be above want.

While awaiting the day of his execution, Ruloff expressed no concern or anxiety as to his own fate; it was the great loss to the world which the failure of his discovery would cause. In this he was earnest and sincere. In an appeal which he

made to the Governor but a few days before his execution, he asked a respite, not for himself, but for his book; when that was completed, he expressed a willingness to suffer the penalty of the law. Prof. Mather thus describes this feature in Ruloff: "His enthusiasm is most remarkable. He sat there in his chains, just sentenced by the highest court to die upon the gallows, and, without a word or apparently a thought about his doom, he argued and pleaded for his favorite theory as though he were wrestling for his life, and was determined to win."

He was more or less incoherent on his favorite subject. In a weekly paper, published in Binghamton, he occupied every week at least two columns with the material of his work. In that matter, as published, this incoherency is plainly to be distinguished.

I think that these instances indicate in Ruloff a distorted imagination, false reasoning, and disordered judgment on the subject of his favorite study. In this respect his mind corresponded to that large class of men who run after one idea, and who spend an entire lifetime in following some *ignis fatuus*. Of this class are those who have filled the Patent-Office, at Washington, with useless models; who prospect for mines in the most improbable regions; who embark in enterprises which every one but themselves can see to be foolish; and who, from the continued and increasing disorder of the mental machinery, at length become fit subjects for a lunatic asylum.

The investigation of the commissioners appointed by Governor Hoffman, as appears by their report, was defective in this, that it did not bring out distinctly this peculiar defect of Ruloff's mind. While the examination made apparent his intellectual capacity, exhibited his powers of reasoning and his adroitness in the discussion of metaphysics, it only alluded to the history of his philological studies, without drawing out in detail his peculiar ideas, or awakening his enthusiasm upon the subject. The examination does not appear to have been intended to discover any latent or concealed mental disorder.

The circumstances under which the commissioners visited

Ruloff would be very likely to defeat any such purpose, as he would at once be placed upon his guard. The object of the examination was announced to him. He did not wish to be looked upon as insane. He had rather die the death of a felon, than to have the great discovery of his life—the work that had engrossed his attention for years—regarded only as the production of a disordered mind. The appointment of a commission "was no move of his." He, consequently, would be as reticent as possible, and his delusions could only be made to appear by skillful questioning, after his confidence had been secured. To Prof. Mather he expressed the belief that his discovery was a special *revelation;* to the commissioners, he only said that he had been impressed with the idea that there was something in language which he was to *discover*. The report does not establish the fact that Ruloff was "entirely sane;" on the contrary, it does reveal indications of mental delusion, quite characteristic of partial insanity.

Ruloff entertained the idea that he was an injured man; that the public had conspired against him; and that he was a victim of public injustice and prejudice. In return, he cordially hated everybody, and was ready to make reprisals on every occasion. He believed it no crime to appropriate other people's property for the furtherance of his great work. To arrest him, even in the act of burglary, was to him an unjustifiable infringement of his personal liberty. I think he fully believed in the position taken on his trial, that the killing of Mirrick was done in self-defence; that Mirrick and Burrows, having first commenced the affray, were aggressors, and, consequently, were not under the full protection of the law.

This distortion of his mind prevented Ruloff from cultivating the higher moral sentiments, or developing his finer emotional nature. Impelled by violent explosions of passion, he was capable of doing any criminal act. Burglary, arson, and murder, would all be resorted to, to carry on his operations, and to remove all obstacles to his success. This state of mind and feelings would very naturally determine to that moral insensibility (which has already been noted), that recklessness of consequences, and that utter *abandon* of all that is

good, which seem to have been characteristic of Ruloff. How much the peculiarity of his organization had to do with the mental phenomena he exhibited, or how far it ought to be considered in mitigation of his guilt, it is not yet time to discuss or determine. The tribunal within whose jurisdiction he now is will duly consider, and mete out equal and exact justice to him, for "shall not the Judge of all the earth do right?" The interests of society undoubtedly demanded that his depredations should cease, and, in the judgment of the law, his life was forfeited and taken.

The case of Ruloff will rank with the most celebrated criminal trials of our country, for the peculiar circumstances attending the case, and the great interest it has excited. The trial of Ephraim K. Avery, of Fall River; of Richard P. Robinson, of New York; of John W. Webster, of Boston; and Mrs. Cunningham, of New York; each, in its turn, attracted a large share of public attention and interest, but none more so than did the trial of Edward H. Ruloff.

In presenting the case before this Society, I only desire to place on record the anatomical and other peculiarities of the extraordinary man whose case we have been considering, as a contribution to the general fund of scientific knowledge.

THE

PSYCHICAL STATUS AND CRIMINAL RESPONSIBILITY

OF THE

TOTALLY UNEDUCATED DEAF AND DUMB.

By ISAAC LEWIS PEET, A. M.*

> Nec ratione docere ulla suadereque surdis
> Quid sit opus facto, facile est ; neque enim paterentur
> Nec ratione ulla sibi ferrent amplius auris
> Vocis inauditos sonitus obtundere frustra.
>
> LUCRETIUS, *De Rerum Natura*, Book V., 1052–5.

THE deaf-mute, as distinguished from one who is simply mute, is a person who, from the mere fact of want of hearing, does not possess the ability to express thought in articulate speech. Dwelling in a world of silence, sound awakens no responsive echo in his soul. Words which, thrilling nerves that excite the brain to action, call for an effort at least of imitation on the part of the child endowed with hearing, affect in him no sense that may be said to produce their counterpart. As the eye is wanting to the denizens of those subterranean localities into which light does not penetrate ; as limbs are not furnished to beings whose locomotion is confined to a liquid *habitat ;* and as the hand is denied to those orders of the animal creation to whose functions that marvelous instrument is not indispensable, so, where there has

* Read before the Society, November 9, 1871.

been no hearing, there is no natural voluntary exercise of the corresponding faculty of speech. This does not imply, what is indeed in most cases contrary to the fact, that the physical organs of speech are defective, for, if the deaf-mute could be invested with hearing, speech would soon follow, and many that have never heard, have been so educated in the use of these organs as to be able to pronounce syllables and words in a manner recognizable by the ear. The mute who is not deaf, however, owes his infirmity to one of two causes; either there is malformation or weakness in some one of the parts on which vocal utterance depends, or there exists a want of vigor in one or more of the intellectual powers, even supposing such powers not to be entirely wanting. Of those mutes from the first-mentioned cause, *two* have been brought directly under my own personal observation and instruction. One was a boy twelve years of age, who had been accustomed to hear, and hear perfectly, the conversation of those around him, and who could answer a great variety of questions which could be satisfied by an affirmative or negative movement of the head, and could obey directions given to him with the voice, but had never himself uttered a word. The malformation of his organs of speech was patent to the slightest inspection. He could not, when he entered the institution, read or write, but, after several years of patient instruction, was brought to a point where he could derive information from books, and express his thoughts and feelings with the pen. Without a natural defect of verbal memory, it was yet evident that this faculty had been greatly impaired by want of the ability to give expression to the words he knew; for it was a long time after he had learned to write single words from vocal dictation before he could retain a sentence of even moderate length so as to reproduce it. His other faculties were very much quickened by the use, on his own part, of signs, which he readily learned. Of course it was necessary to explain to him every form of expression he had not heard before. This was done partly by means of spoken words and partly by gestures, which he seemed to comprehend the more readily from the fact that, in the society of deaf-mutes in

which he was necessarily placed, he acquired a great facility in expressing himself in that way. In his case, the power seemed to be developed of comprehending more perfectly what was communicated by the method to which he himself naturally had recourse when communicating his ideas to others.

The other case was that of a young man eighteen years of age, also mute from birth. He entered the institution entirely illiterate, never having learned the alphabet in either its printed or written form. He had great self-respect, always attired himself neatly, and appeared to advantage in the silent intercourse he had with others. He had for some years worked in a woolen factory, and was able to support himself without assistance from his friends. In the single year he was under instruction, he acquired an ability to read understandingly, as well as to give correctly in writing the incidents of every-day life, so that on returning to his manual labors he was in possession of a very satisfactory means of communication with others. Unlike the lad first mentioned, he must all the while have had a mental speech fully up to the necessities of the society in which he was accustomed to move. The language of signs was not used in his instruction, and he seemed to feel no inclination to avail himself of it. No impediment of speech was apparent to the eye—his inability being probably the result of some imperfection in the larynx.

The writer's own experience of nearly thirty years, however, enables him to add his testimony to that of other instructors of the deaf and dumb, to the effect that cases of hearing-mutes, with good intellectual capacities like those just mentioned, are so rare as to make the possession of hearing in connection with want of speech *prima-facie* evidence of mental imbecility. Instances of this last kind are unfortunately very numerous. Hardly a year passes that several such mutes are not presented for admission into institutions for the deaf and dumb by parents, whom hope had directed thither, to find that the calamity which had befallen their children was one far more deplorable than that of mere inability to enunciate words, as it also is of mere inability to

hear them, notwithstanding all that this last-named condition involves. The active part which those connected with institutions for the deaf and dumb have taken in the initiation of idiot asylums, and the frequent occasion they have for correspondence with their managers, is thus accounted for. With beings such as these, patient effort to call into exercise a dormant will, and gradually to develop enfeebled faculties, has met with some degree of success, and, if I am correctly informed, some have been enabled to attain intelligent vocal utterance. But the greater proportion are incapable of appreciable benefit, so that our idiot asylums, so far as they prove themselves schools, must be regarded in the light of institutions wherein only those children can be benefited who are not so far demented as to be incapable of speech.

No such proposition can be entertained with regard to the deaf-mute. His defects are not primary, as appertaining to the mind; but secondary, as the resultants of the deprivation of one of the senses. The only class of ideas to the perception of which he may not arrive are those which are dependent in themselves considered upon the sense of hearing, though the vibrations which affect other nerves than the auditory may produce sensations so analogous that he may be considered, so to speak, as under the influence of the penumbra rather than that of the total eclipse, or perhaps more appropriately under the faint refraction called twilight instead of the full light of day. For instance, the *drum* will at once attract the attention of any deaf-mute, however profound his deafness, and the idea of musical *time* is appreciable by the majority of this class. Experiment has shown that the telegraph alphabet of Morse, beaten on the drum, on the principle of a single strong beat for the short dash, and a quick double beat for the long one, gives rise to vibrations affecting the deaf so distinctly, that a class of such persons, with their faces so turned that they could not catch sight of the instrument, have recognized words spelled by this means, and written them promptly and accurately upon the black-board; and, in at least two instances, deaf-mute young ladies, without a particle of hearing, have been taught to render correct-

ly, on the piano, strains of music represented to the eye by notes.

It will thus be seen that, like the Parian marble in which the mind of a Praxiteles sees the perfect statue, and from which, with cunning hand, he develops the realization of his ideal, or the rude mass of iron in which the master-artisan perceives, and from which he evokes the moving, almost breathing machine, the uneducated deaf-mute is a being of great possibilities, but still only possibilities.

His condition is a field on which Psychology gazes with interest as intense as that with which Newton viewed the starry firmament, and in which he seeks the solution of questions more difficult than those which the geologist asks the rocks.

Are there innate ideas? Is thought possible without words? Is the idea of God inseparable from the human mind? Is conscience an innate or an acquired faculty? Is moral responsibility a principle applicable to those who, possessing mental and moral powers, are yet so restrained in their exercise that they are but very imperfectly developed? Such are a few of the inquiries which spontaneously suggest themselves in connection with this subject, and which will necessarily be touched upon, if not fully discussed, as we attempt its development.

The term *uneducated*, as applied to a deaf-mute, is not to be understood as implying merely the absence of training in verbal language, but of all successful attempts on the part of those around him to make available to him the observation and experience of others, and to fix in his mind general principles of thought and action.

Considered in this light, what is he? Is he an intellectual being, and, if so, in what sense? Though the current thought of the community in which he dwells finds no access to his mind, though the language which conveys to the hearing child of three or four years of age the germs of all subsequent knowledge is unheard and unheeded, he possesses a certain degree of mental power which is entirely independent of such conditions.

This is not confined to that recognization of forms, and that association of recognized objects with qualities, and of actions with resulting sensations, in which many of the brute creation show such a degree of intellectual power as to make it difficult to fix the boundary between what we call instinct and reason; for, though many of the mental phenomena presented by deaf-mutes are merely a higher development of what is usually regarded in the light of animal instinct, as exemplified by the chicken that runs to covert when the wing of the hawk sweeps the sky, by the bee that flies in the face of the nearest stranger when the hive is disturbed, or by the dog that runs in the direction indicated by the finger of his master, still the higher possibilities of the heir of human reason soon manifest themselves.

Perhaps the first evident tokens of a reason higher than that of the highest of the mere animal creation, is the ability to designate specifically the object of desire, when that object is not in sight, and to complain specifically of wrong done when the author of that wrong is not present. Many of the inferior animals can manifest their desire for some object which they can designate when it is present, and some can exhibit indignation against those who have wronged themselves or their masters when they see the wrong-doer before them, but it is an exclusively human prerogative to be able to designate the *absent* intelligibly to others, and a yet higher prerogative to be able to designate the kind of wrong or the kind of benefit received at a time past. The dog who barks furiously at the man who struck him yesterday was never known to *indicate* purposely whether he was struck with a stick or a stone, whether in the head or the foot.

We may assume, then, that the starting-point of human intellect, as distinguished from animal instinct, is the use of *signs* to designate absent persons, objects, places, qualities, and actions. For the child who hears, these signs are very early supplied by the spoken words constantly ringing in his ears. For the deaf-mute, they must be visible signs.

When, therefore, a deaf-mute child has become able to designate whether he wants this thing or that, neither being in

sight, or to tell what was taken from him and who took it, he has evidently ascended above the domain of mere animal instinct. The intelligent use of signs for ideas, furnished by gestures and expression, is as much a test of the possession of human reason as the intelligent use of the verbal signs which we call speech.

There are deaf-mutes whose sign-dialect is very rude and meagre, and there are deaf-mutes equally ignorant of verbal language who yet possess quite an extensive and well-developed system of signs. The difference is only in degree.

As, in the scanty dialect of a tribe of savages, we recognize the human power of speech, so in a very moderate ability to use signs on recalling the absent and the past, we recognize those germs of human intellect, which may develop into the multiform bloom of a cultivated language of gesture and expression.

That man is proved to be man only by the possession of a language, is a received axiom. That this language or means of communication may be addressed to other senses than the ear, all intelligent men will admit. But the corollary that this language, the possession of which stamps its possessor as a rational being, may be simply a language of gesture, movement, and expression, without any hint of words spoken or written, is apprehended with difficulty by many men even of high intellectual cultivation. And yet this is equally demonstrable by facts and analogies.

It is very true that the processes of mental development by speech and by a language of gestures, are not parallel—cannot, in fact, be made to run parallel. The great prerogative of the *one* is its power of generalizing and concentrating thought. The *other* owes to the pantomime which forms its basis, supplies its elements, and gives it much of its self-interpreting power, a certain pictorial character. Hence it is more graphic, and, for the class of material ideas, more precise. But, naturally dealing with the concrete and the actual, it grasps generalizations, abstractions, hypotheses, and personifications with difficulty, and attains to their full expression only after long and diligent cultivation, under the auspices of

minds trained by the aid of verbal language. The great difference apparent in the mental and moral condition of uneducated deaf-mutes, who were probably originally of equal mental capacity, is due to the fact that the ignorance, stiffness, and prejudices, of many of the connections and natural guardians of deaf-mute children have operated to induce them to repel, rather than encourage and aid, the instinctive efforts of the deaf-mute to make his wants and wishes known by signs. Hence it is that a deaf-mute child placed in such discouraging circumstances begins to talk by signs much later, and develops much less ability to communicate in that way than another deaf-mute child who is surrounded by intelligent and sympathizing friends, especially where there is already, in the family, some knowledge of the mode of communicating with the deaf by gestures and pantomime. Thus it is that, where there are two or more deaf-mutes in the same family or neighborhood, they usually possess a much more expanded dialect of signs than that which a solitary mute may be able to devise, and, as will be easily inferred, their social enjoyments are much greater, and their intelligence, being so much earlier and more constantly called into play, is much more fully developed.

In cases of extreme neglect, the deaf-mute may seem hardly superior to an idiot. But the capacity for development still remains, often to a somewhat late period of life, though, of course, faculties left so long in total inaction become more and more torpid with advancing years.

Cases of such extreme neglect are not now very common. The magnetic sympathy of mind with kindred mind penetrates the barriers interposed by closing the usual channels of sense, and it is seldom, indeed, that the deaf-mute is not blessed with at least one or two companions who, finding the ear-gate closed, will aid him to make more straight and easy the path to communion of souls through one or more unaccustomed portals.

A few years since, there died in Scotland a very old man bearing the name of James Mitchell, a name he himself had never learned to utter, or write, or spell. He had never heard

the *voice*—never looked on the *face* of a man or woman. Yet, though deaf and blind from birth, he gave evident proofs of the possession of human faculties, and by means of signs could make his wants known with considerable particularity to the one or two accustomed to communicate with him, and could receive and follow out directions addressed to the sense of touch to an extent which may seem incredible to those who have not investigated the ability of the human soul to supply senses that are wanting by the cultivation of those that remain. Had he been so fortunate as to meet a Howe or Hirzel in his plastic youth, he might have attained to a mental and moral cultivation perhaps not inferior to those which have rendered Laura Bridgman and James Edward Meystic the marvels of the world.

You will probably recollect that Blackstone, that oracle of the English common law, while admitting that ordinary deaf-mutes may manifest their wishes by signs, holds that one deaf, dumb, and blind from birth, must necessarily be in a condition of an idiot. But those who have investigated such cases as that of James Mitchell are aware that the germs of a sign-language possessed by him are capable of being developed, as was done in the case of Julia Brace at Hartford, so as to furnish a medium for all necessary communications. Even with the deaf, dumb, and blind, where there are human faculties, the difficulties that prevent their development and cultivation may leave the individual low down in the scale of intelligence, but still far above the idiot or the mere animal.

It is painful to recall the judgments that in former times have been passed on the uneducated deaf-mute. There are few but have heard of that man of saintly and self-sacrificing benevolence, the Abbé de l'Epée, who devoted his life and his fortune to the melioration of the lot of the deaf and dumb, and to whose zeal and labors it is in a large measure due that education became possible to more than a favored few of that afflicted class. This good man was accustomed to speak of the uneducated deaf and dumb as being on a level with the beasts that perish. His world-renowned disciple and successor, Abbé Sicard, declares that "a deaf person is a perfect

cipher, a living automaton. He possesses not even that sure instinct by which the animal creation is guided. He is alone in Nature, with no possible exercise of his intellectual faculties, which remain without action. As to morals, he does not even suspect their existence. The moral world has no being for him, and virtues and vices are without reality."

Other eminent teachers have put forth opinions equally derogatory. M. Guyot, of Groningen, one of the names that shine the brightest among the early benefactors of the deaf and dumb, assures us that "this unfortunate class are by Nature cut off from the exercise of reason; they are, in every respect, like infants, and, if left to themselves, will be so always, only that they possess greater strength, and their passions, unrestrained by rule or law, are more violent, assimilating them rather to beasts than men."

An eminent German teacher, Herr Eschke, of Berlin, says: "The deaf and dumb live only for themselves. They acknowledge no social bond; they have no notion of virtue. Whatever they may do, we can impute their conduct to them, neither for good nor for evil."

Another German teacher, Herr Caesar, of the school at Leipsic, founded by the celebrated Heinicke, the father of the German method of instruction, remarks that "the deaf and dumb, indeed, possess the human form, but this is almost all which they have in common with other men. The perpetual sport of impressions made upon them by external things, and of the passions which spring up in their own souls, they comprehend neither law nor duty, neither justice nor injustice, neither good nor evil; virtue and vice are to them as if they were not."

Dr. Barnard, to whom I am indebted for these citations, very justly and pertinently remarks that many of these instructors brought to their task the prejudices once universal, and not yet extinct, which classed deaf-mutes among idiots. They seem, moreover, to have been unconsciously influenced by a desire to exaggerate the sad condition of the uneducated mute, so as to make a stronger appeal to public sympathy, and to set in a brighter light the success of their own labors

by contrast with the dark condition of the being whose education they had undertaken.

There are not wanting testimonies on the other side of the question. I will here only cite that of M. Bébian, a younger associate of Sicard, in the institution at Paris, and the most able and accomplished teacher of deaf-mutes in his time. His opinion is thus expressed: "Deaf and dumb persons only differ from other men by the privation of a single sense. They judge, they reason, they reflect. And, if education exhibits them to us in the full exercise of intelligence, it is because the instructor has received them at the hand of Nature, endowed with all the intellectual faculties."

To reconcile these conflicting opinions of eminent authorities, we must recall the fact already stated, that there is an immense difference, both mental and moral, between a deaf-mute who has been neglected, and possibly hidden away from society as a family disgrace (a treatment not unusual in the times before the zeal and success of De l'Epée made deaf-mutes objects of curiosity, attention, and wonder), and a deaf-mute who has been blessed with kind companions and has been encouraged and aided to enlarge and improve his pantomimic dialect. In a deaf-mute in the *former* condition, even the germs of the rational and moral faculties are scarcely manifested. In the latter, they have acquired a very considerable but somewhat peculiar development.

In treating of the psychological condition of the uneducated deaf-mute, we will take one of the average condition of the class—neither a victim of total neglect in childhood, nor the favored recipient of unusually kind, constant, and intelligent care. And here we must distinguish between what he is intellectually and what he is morally. By the effort to communicate his most obvious wants, and to bring himself into association with others, and by the reciprocal effect of attention to these wants, and of response to his overtures, his mind is quickened into activity. The signs that spring up in his intercourse with his family may refer to all the more obvious interests of their mutual every-day life. He may be told to bring water from the spring, to call his father or

brother, even to go to the store for certain articles. He may be told that the family will go to church after sleeping once, and that he will accompany them, or that he may ride to a neighbor's, or that a friend is coming to see him, and he will understand it all; but the moment that there is an attempt to communicate anything that has not been shown him, or that he has not seen, the effort fails. He obtains, if not a confused, at least a very erroneous idea. He is, therefore, left very much to his own conceptions. That he has an idea of cause and effect, there is no doubt, from the recorded recollections of deaf-mutes concerning their days of ignorance. This idea is concrete in the sense that he seldom arrives at general conclusions, his judgment being exercised on particular cases that have fallen under his observation, and which he recognizes when they occur again. He knows that when it is cold he can obtain warmth by putting wood in the stove and lighting it; that if he leaves a pitcher of water out-of-doors on a cold night, it will freeze, and the pitcher will break; that if he goes out in the rain he will be wet; that if he falls he will be hurt. By observing an effect familiar to him, he also knows what has produced it. He recalls past scenes which have been a part of his experience, and he anticipates what will happen on the morrow when a particular pleasure is promised him. He has, therefore, the power of memory, of analogy, and of imagination. He has, moreover, the association of ideas; for, in his efforts to communicate, it is observed that one thing will suggest another, and, in his silent communings with himself, he will have a succession of thoughts, one arising from another. In all this exercise of mind, except when he is actually conversing with others, he does not employ any vehicle of thought, not even signs. This is the invariable testimony of all deaf-mutes whom I have questioned on this subject. *They think in images, and the signs they make grow out of and represent these images.*

Nor is this method of thought peculiar to deaf-mutes. The dreams which visit us in the hours of sleep are nothing more. The visions of inspired seers required careful subse-

quent effort to portray them in words. The poet reproduces, in the music of rhythm, the same ideal scenes that the painter presents to us on the canvas, and the converse is true that the painter is often the poet's best interpreter. It is thoughts without words that have immortalized Handel and Mozart and Beethoven, and given to their stirring symphonies a power that eloquence often strives for in vain. The blast of the bugle is a more inspiriting call than the captain's "Forward!" and the light streaming on the banner a more cheering encouragement than any shouted words of hope. The journalist gives us descriptions of scenes and incidents which he has viewed, and succeeds in conveying to us correct conceptions, only by attaining that precision in the use of words which will enable the reader to form a distinct picture in his mind. The historian must carry his imagination back to the past, and, so to speak, lose himself in it, to convey to our minds any just conception of what *was*. It is this principle which gives such popularity to illustrated periodicals, and which makes the actor an educator to a certain class of minds. The etymological signification of the word *idea*—what is beheld—is of itself an indication that at least a large class of our thoughts are but pictures in the mind.

The expression, then, that we think in words, means nothing more than that long practice has enabled us to associate some form of words directly with our thoughts; for the thought is always antecedent to the expression.

In generalization, it is true, words greatly assist in keeping before us a certain pivotal idea, but even this idea is but a synthesis of many concretes instantaneously made in the subtle alchemy of the mind. No true thinker gives words the prominence in his mental laboratory, both as writer and student. He painfully endeavors to represent, by approximating symbols, thoughts to which he feels he can never give the exact expression, and he carefully analyzes, with patient toil, the words which others have presented as *their* embodiment of truth.

Educated deaf-mutes have furnished to us, by their recol-

lections of the past, much that throws light upon the amount of knowledge they had acquired previous to the time when they were brought under systematic instruction.

The details and results of a searching inquiry into this subject are given in a paper on the "Notions of the Deaf and Dumb, especially on Religious Subjects," contributed by my venerable father, Dr. H. P. Peet, to the *Bibliotheca Sacra* of July, 1855. To renew the investigation, for the sake of originality, even if I might hope to bring it to as complete and satisfactory an issue, would be a work of supererogation. I, therefore, avail myself of Dr. Peet's labors, so far as they illustrate my present theme.

"Few, if any, of these unfortunate children," says Dr. Peet, "seem ever to have reflected on the origin of the universe or the necessity of a first cause for the phenomena of Nature. As one of them expresses it, they 'thought it was natural' that the world should be as it is. Some even fancied that those whom they saw to be old had ever been so, and that they themselves would ever remain children" (or at least had not learned to anticipate a time of old age for themselves). "Those who had learned, by observation and testimony, the general law of progress from infancy to old age, supposed, if they attempted to think on the subject at all, that there had been an endless series of generations. But probably there are very few uninstructed deaf-mute children of ten or twelve who have reached such a point of intellectual development as even this idea implies. It is much easier to give to a deaf-mute, by means of rude and imperfect signs, the idea that there is some powerful being in the sky, than to explain or even hint that this being made the world. Hence it is that very few deaf-mutes have ever acquired, either from their own reflections or from the imperfect signs of their friends, any idea of the creation of the world, or even of the plants and animals on its surface. Nor need this surprise us, when we reflect that the most enlightened nations of antiquity had not mastered this great idea. Ovid, writing in the learned and polished era of Augustus, expressed the popular belief of his time in the theory that

all things were produced by the due union of heat and moisture.*

"Many deaf-mutes, however, whether from their own meditations, or from misunderstanding the signs of their friends, have acquired childlike ideas respecting the causes of certain natural phenomena; such as rain, thunder, and the motions of the heavenly bodies. Quite a number supposed that there were men in the sky who, at certain times, made themselves busy in pouring down water and firing guns. The notions of deaf-mutes on such matters are often amusing enough; but, when not derived from a misconception of the signs of their friends, are evidently formed in a spirit of analogy. . . An English deaf-mute boy, observing that he could raise quite a strong wind with his mother's bellows, naturally concluded that the wind that sometimes blew off his cap in the street came from the mouth of a gigantic bellows. Neither does it seem that this belief was troubled by his inability to find the operator or the location of this bellows, for, to one whose sphere of observation was so limited, and who could learn so little of the world beyond it from the testimony of others, the region beyond the circle of a few miles was as wholly unknown, and as open to the occupation of imaginary giants and engines and other figments of the imagination, as was ever the land of the Cimmerians to the Greeks, or the Fairy Land to the popular belief of the middle ages. Similar to this was the notion of a girl, who seems to have imagined that the plants which spring up annually in the fields and woods were, like those in her mother's garden, planted and watered by 'some women'; an infantile conception, in which, however, may be traced the first germ of the old Greek notions respecting nymphs and dryads. . . .

"One lad, struck by the similarity between flour falling in a mill and snow falling from the clouds, concluded that snow was ground out of a mill in the sky. Others supposed

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* 'Quippe ubi temperiem sumsere humorque calorque
Concipiunt; et ab his orientur cuncta duobus.'

Metamorphoses, I. 8.

that the men with whom their imaginations, or the misconceptions of the signs of their friends, had peopled the sky, brought up water from the rivers or ponds, and dashed it about through holes in the heavenly vault. The more general belief seems, however, to have been that there was a great store of rain and snow in the sky, a matter no more to be wondered at than the abundance of earth and water below. Some suppose thunder and lightning to be the discharge of guns or cannon in the sky; a notion the converse of that well-known one of the savages, who, when they first met in battle a European armed with a musket, believed they had encountered a god armed with thunder and lightning. Others say they believed lightning to be struck from the sky by iron bars. They had doubtless observed the sparks struck by iron from stone."

Thus it is that human nature repeats its phenomena, and that deaf-mute children, left, by their inability to profit by the experience of their elders, in a prolonged infancy, exemplify, in their efforts to account for the phenomena of Nature, many of the fancies that prevailed in the infancy of society. The last idea cited bears a curious resemblance to the Homeric conception of Jupiter hurling the thunder-bolts forged by Vulcan.

In answer to the question whether they had any idea how the sun, moon, and stars were upheld in the sky, the uniform reply was that they had never thought about it. "It seems as natural to children that those bodies should keep their places above us as that the clouds or the sky itself should. . . . The stars, in the view of many, were candles or lamps lighted every evening for their own convenience by the inhabitants of the sky, a notion very natural to those who had had opportunities of watching the regular lighting at night of the street lamps of a city. The moon was, to most of those whose answers are before us, an object of greater interest than any of the other heavenly bodies. One imaginative girl fancied that she recognized in the moon the pale but kind face of a deceased friend; others thought that she continually followed them and watched their actions."

A few regarded the moon with fear, while others thought she loved them.

The answers to the question, "Had you any idea of the existence of the soul as something distinct from the body, and which might be separated from it?" were uniformly in the negative.

"It is remarkable," says Dr. Peet, "that only one, out of more than forty whose statements are before us, seems to have imbibed any of the popular superstitions respecting ghosts. If the misfortune of the deaf and dumb prevents them from learning much truth, it often protects them in most cases from receiving those early impressions of superstitious terror and folly which it is often so difficult to get rid of in later life."

To the question, "What were your thoughts and feelings on the subject of death? Did you know that you must yourselves die?" Dr. Peets cites many interesting answers, which my limits compel me to omit. Their uniform tenor was to show that to the uneducated deaf-mute death is truly the king of terrors. Those who had not been taught the contrary by the signs of their friends, cherished the belief that they could evade its power and live on forever. "We have heard of a lad," he says, "who, having observed that people who died had taken medicine, resolved to abstain from medicine as well as other hurtful things, an example of prudence worthy of general imitation." Another had entertained the horrible suspicion that the doctor's business was to poison off the sick; reminding us that tribes of savages have sometimes risen in fury and murdered missionaries, because the sick to whom they had given medicine had died.

"So far as we can learn from their statements," says Dr. Peet, "none of the deaf and dumb have originated the idea of the existence of the soul after death, in a state separate from the body, and the attempts (unskillfully) made for this end, by many anxious parents, have at most given the child-like idea that the dead are taken bodily from their graves, or thrown bodily into a fire. The early impressions of certain German deaf-mutes, recorded by one of their number

(O. F. Kruse, of Schleswig), were, that the bodies of the good remain uncorrupted in the grave, where they only slumber to be hereafter awakened, while those of the wicked rot and become the prey of worms. It is easy to understand that children who have never seen a corpse, except in the brief interval between death and burial, may suppose that the dead only sleep in the grave. One of the pupils in the New York institution had been haunted by the terrible idea that, should she die and be buried, she might awake in the grave, and would be unable to call for help."

The general testimony of the deaf and dumb is, that before instruction they never had any idea whatever of the object of public or private worship, some probably taking the weekly assemblage at church as being as much a matter of course as any other periodical event; while others, if they tried to think about it, only added it to the long list of human actions which, in their darkened state, were incomprehensible to them. One or two seem to have made a shrewd guess at the secret motives of some outward professors, when they considered public worship as a recreation, and family prayer as a play; and the idea of another, that people met to do honor to the clergyman, might in some cases be pretty near the fact.

"To the same purport," says Dr. Peet, in summing up, "on all the points we have considered, is the testimony of many other deaf-mutes both in Europe and America. Nor have we ever learned of any well-authenticated case of a deaf-mute who gained any correct ideas on religious subjects, by his own unaided powers of observation and reflection. We feel authorized, by the evidence before us, to deny that any deaf-mute has given evidence of having any innate or self-originating ideas of a supreme being, to whom love and obedience are due, of a Creator, or of a Superintending Providence, of spiritual existence, or of a future state of rewards and punishments." And this is the testimony of all who know the deaf and dumb thoroughly.

Yet the readiness with which deaf-mutes, at an early stage of their instruction, apprehend these great truths, the unques-

tioning faith with which they receive them, and the eagerness with which they cling to the hope of immortality, and especially to the promise that in heaven the deaf shall hear and the dumb join in the everlasting song of praise, conclusively show that the Creator has implanted in these children of silence a capacity for religious sentiment as fully as in their brothers and sisters who hear. And though St. Paul says, "Faith comes by hearing," he only meant to those who *can* hear. Had he ever known an educated deaf-mute, a spectacle which the world never saw till centuries after the great apostle had finished his course, he would have admitted that faith might come in the fullest measure through signs alone.

In a moral point of view the uneducated deaf-mute presents features of a still more interesting character. The idea of consequences he certainly imbibes whenever the government exercised over him is unvarying whether for good or for evil. From certain acts he is deterred by his relation to certain persons, and to other acts he is in the same way stimulated. Under judicious control he comes to associate in his mind a line of conduct with what produces pain, and another line of conduct with what produces pleasure. Out of this grows a sort of conscience which leads him to be sorrowful when he does certain things, and to be glad when he does the contrary. This conscience is entirely dependent upon the parent or other person to whom he is subjected. Given a good master, and he will be very likely to have a kind of moral sense that will be a safe guide in the life he leads, and will bring about habits which will be useful to him hereafter. Given a corrupt master, and the principle that in the former case would have resulted in leading him to be *good* will as certainly have the effect of making him *bad*. If the authority exercised be tyrannical, certain natures will rebel, and the most evil results will follow. If it be capricious, this moral sense will never exist. If no authority whatever be exercised at home, and he is left to his own devices, he will have as many consciences as there are persons he fears or desires to please. I have in my mind a boy now in the institution, whose moral education has been a work of peculiar difficulty.

Though not deficient in intellect, easily pleased, and easily chagrined, no appeals to any of the higher motives seem to have the least effect upon him, not even an appeal to the affection borne him by a fond mother—alas! too fond. So far as emotion is concerned, he is not unlike Undine before she was endowed with a human soul.

From this it may be inferred that, by his own unaided uninformed intellect, and uninstructed nature, the uneducated deaf-mute does not arrive at the idea of what is really right or wrong, and is ignorant of general law, either human or divine. He may be obedient, diligent, affectionate, habitually honest, but it will be owing to the influence of kind and firm control and good example, *not* to the higher moral and religious motives that are addressed to children who hear. He is too often self-willed, passionate, prone to secret vices; but this unfavorable phase of character is generally chargeable to early injudicious indulgence, the example of evil companions, and the lack of those *higher* motives that are supplied by religious education. He is *suspicious*, because he has been the butt of thoughtless companions. He lacks self-control, because he cannot, as well as others, appreciate the consequences of his actions. He *wishes*, as well as those who hear, to be *loved* and *respected*, and, like them, conceals his evil practices from those who he knows would disapprove of them. But he cannot distinguish between the approbation of the good, and the mere complaisance of the unthinking; is apt to mistake the laughter of the latter for applause; and, when he is thwarted in desires, the folly and criminality of which he cannot appreciate, he is apt to think himself the victim of an unjust discrimination and oppression.

The view that has been taken of the intellectual and moral condition of the uneducated deaf-mute seems to settle the question of his criminal responsibility. One who knows, and can know no more of law than what he can infer from the consequences which he has noticed are likely to follow from specific acts, who often mistakes his impulses for principles, and whose character is settled for him either by natural endowment or by the peculiar circumstances in which he may

be placed, can hardly be considered as accountable in any ordinary sense of the term. Still, when he commits crime he imperils the safety of the community, and violates the sanctity of the law, whose interference must in some way be invoked.

The two great classes of crime, viz., crimes against property and crimes against person, have given rise to proceedings of a very curious and interesting character when the criminal arraigned has been an uneducated deaf-mute.

Under the first head, the crime with him usually takes the form of theft, never of fraud; though sometimes it occurs that in the indulgence of anger or revenge he will injure property to an extent that, if the offense were committed by a hearing person, would subject him to the pains and penalties of the law.

In some cases occurring in France, the plea was successfully advanced that a deaf-mute was not morally or legally responsible, and the criminals were dismissed, suffering only the detention before trial, which they probably regarded as the full punishment of their offense. They were perfectly aware that they did wrong, for they hid themselves to steal, and hid what they had stolen. This, in itself, it may be said, hardly exhibits more proof of intellect than is displayed every day by the sheep-stealing cur; but the deaf-mute, however uneducated, always displays a keen appreciation of the rights of property—knows pretty clearly what belongs to himself, and what belongs to others; and, like children in general, is easily moved to bursts of passion by any interference with what he considers as belonging to himself. And that he steals with contrivance and in secret is a proof that he is aware that he will be punished if detected. For this class of offenses, therefore, it would seem as though moral, if not legal, responsibility could be attributed to him, though his unfortunate condition should certainly move his judges to leniency in pronouncing sentence upon him. And this is the view that has prevailed in more recent cases.

There is, however, a different class of cases in which the law comes into collision with the private rights of property. For instance, in a recorded case, near Rodez, in France, officers were sent to a farm to seize property for debt. In so

doing, they treated with roughness the peasant whom they caught in the attempt to drive off his cow. The deaf-mute son of the latter, a vigorous youth of twenty, seeing, as he thought, the rights of property violated, fell upon the aggressors and soon put all three to flight. Summoned with his father before the tribunals for this grave offense against the law, he recognized in court his late antagonists, pointed them out as robbers, and was with difficulty restrained from renewing the chastisement he had inflicted on them. He carried with him the full sympathy of the public and of the jury, and was acquitted on the ground that, being entirely ignorant of the legal rights in the case, he had only obeyed one of the first laws of Nature in defending his father and his property.

The class of crimes against the person presents greater difficulty, mainly from the extreme punishment which the law inflicts upon the highest of these crimes. If human law had never assumed the high and solemn prerogative of taking human life, the question of moral responsibility would not have been invested with such interest and importance in a legal point of view. A punishment that is irreparable, and, if erroneous, is in itself a great and irreparable wrong, startles the conscience, and leads it to demand indubitable authority for a punishment that is in no wise reformatory, and to welcome exceptions to the rule of life for life. This authority, and this rule of exceptions, are supposed to be found in the doctrine of moral responsibility and irresponsibility. It is assumed that the man who takes human life with premeditation, thereby forfeits his own, and knows beforehand that he does so, whereas he who strikes a blow in the sudden heat of passion, not intending to take life, is not responsible to the full extent of life for life if the blow proves fatal.

Another class of exceptions is that of idiots and maniacs, to whom guiding reason being denied by the act of God, they are held not to be responsible for their criminal acts, though the safety of society may demand that they be held in duress. The same principle has been naturally applied to the deaf and dumb; who, by the Roman code, being classed with idiots and the demented, in all the points of civil disability, denied

the control of their own property in life, and precluded from altering its descent by will, were, by necessary consequence, classed with them also in the matter of criminal responsibility for criminal acts; being also, like them, subject to legal restraint when dangerous.

The cases in which uneducated deaf-mutes have been arraigned for murder are painfully numerous, considered in proportion to the number of this class of persons. The able and exhaustive treatise of Dr. H. P. Peet, on "The Legal Rights and Responsibilities of the Deaf and Dumb," gives the particulars of nearly a dozen such cases taken from European reports and journals, to which have since been added some in this country.*

The cases of Jane Campbell in Scotland, and of Esther Dyson in England, uneducated deaf-mute women, each of whom was charged with the murder of her illegitimate child, can be found in "Beck's Medical Jurisprudence." In the former case, after much argument and many doubts, the majority of the court decided that the prisoner was capable of being put upon trial; but her counsel interposed the objection that she could not be tried till it was explained to her that she was at liberty to plead guilty or not; and, as no means could be found of explaining this to her, on this mere point of technicality, the trial was stayed. In the latter case, the prisoner was judged incapable of being tried and conducting her defense, and was remanded to close custody, as in the case of a lunatic, till the king's pleasure should be known.

In neither of these cases was the decision based upon the ground of want of moral responsibility, the difficulty lying in

* This valuable monogram was printed in the proceedings of the Fourth Convention of Instructors of the Deaf and Dumb, which is now very scarce. A reprint for private circulation is also quite exhausted. An imperfect copy appeared in one of the numbers of the *American Journal of Insanity* for the year 1856. It is especially valuable to the legal profession, for the full details it gives of the conflicting opinions of many lawyers and judges both in Europe and America; among other points, on the ability of an uneducated deaf-mute to make a contract or to give evidence in a court of justice, and on the mode of ascertaining his wishes and taking his testimony.

the inability of the prisoner to comply with the established forms of legal proceedings; but we have an interesting report of a German case reproduced in the *American Annals of the Deaf and Dumb* for January, 1871, in which the accused, Johann Schmidt, an uneducated deaf and dumb shoemaker, was held morally and legally unaccountable for having killed his employer with a shoemaker's knife. It was shown that the master was a man of violent and brutal character, and that the deaf-mute felt, or professed to feel, in fear for his own life. But his defense turned mainly on the question of responsibility. His counsel urged that, "in the case of a person fifteen years of age,* who is endowed with all his faculties, the law doubts whether he is accountable; but the accused, in respect to intellectual development and to responsibility, is not to be compared with a hearing person fifteen years of age. The laws are not known to the accused, and no one can be tried by laws which he does not know." This reasoning had the effect to secure the full acquittal of the prisoner, who, however, seems to have been quite intelligent for one of his class, and was even able to allege distinctly, by signs, in his own defense, that, alarmed by the threatening gestures of his master, "dark night came upon his mind."

Other cases have been recorded in which deaf-mutes have, sometimes openly, sometimes lying in wait, murdered those who have offended them. Their advocates generally put in the plea of absence of responsibility; but in most cases, at least those under French law, the plea has been overruled, and the prisoner put upon his trial. His misfortune, however, almost invariably moves the jury and the court, if he is found guilty, to a recommendation of mercy. In France, where a verdict of "guilty, with extenuating circumstances," has the effect to save the life of the criminal, this verdict was rendered in all the cases of deaf-mute murderers which we have seen, though one or two were marked with circumstances of unusual atrocity. The fearful ignorance and neglected state

*So in Germany. Under English common law, we think, fourteen.

of some uneducated deaf-mutes are justly considered extenuating circumstances when there are no others.

I will close this branch of the subject by a sketch of a recent case which has especially attracted my attention, from the fact that I was summoned to appear in it as an expert:

In Ulster County, in this State, a deaf-mute boy of mixed parentage, African on his mother's side only, born in a poor-house, instead of being sent, as he might have been, to an institution where public provision had been made for the education of himself as well as all his fellows in misfortune, was bound, during his minority, to a wealthy farmer. Certainly a great wrong was inflicted on Levi Bodine (the name given the boy by his mother, a name he himself never heard or knew), in depriving him of the means of education. And great wrong, sooner or later, generally entails severe retribution.

The boy's employer was a respectable and intelligent man, but did he ever seriously reflect that he had assumed a very high and solemn responsibility in taking charge of an immortal soul—giving color and shape by his management, or want of management, to the whole future of a lad whose strong and passionate nature might, under skillful and judicious care, have been trained to form an affectionate friend, a worthy and useful citizen, and a sincere worshiper of the Most High? Unable to reason with his deaf-mute apprentice, or appeal to his better feelings, his employer seems to have contented himself with constant appeals to personal authority.

One day Mr. Hasbrouck insisted on making the deaf-mute do some work which he did not wish to do. According to the statement of the latter, made in signs to the writer and one of his colleagues who accompanied him, the master used violence to that end, and the mute, like a half-tamed lion, roused to sudden fury, slew his supposed oppressor with an axe, which he was using at the time.

We are told that great indignation was aroused in the neighborhood by this murder of a respected citizen, on what seemed slight provocation. The deaf-mute could not tell his side of the story, and there was no one to tell it for him.

When the deaf-mute homicide was arraigned before a jury empaneled to test the condition of his mind, his counsel presented the pleas of want of capacity to be tried, which they found in their books had been presented in similar cases in England.

At the opening of the trial, the prisoner's counsel claimed that he was unable to communicate with his client in any way ; that it was impossible to convey to his mind the different degrees of homicide ; that there was no way to inform him of his right to challenge jurors ; that he could not be sworn in his own behalf, and that the law provided that no man should be tried who was not, at the time of the trial, able to understand the details of the case and prepare a suitable defense.

The district attorney, on the other hand, said that the prisoner's sanity was undisputed ; there was no malformation of the brain ; the neighbors and acquaintances of the accused were able to communicate with him by signs and make themselves understood. After hearing the arguments and the testimony of neighbors and the experts, Judge Hogeboom stopped the proceedings, expressing the opinion that it was of no use to send the case to a jury, and that, before the prisoner could be tried, he should be instructed. The prisoner was remanded to the jail, but the sheriff took no pains to carry out the recommendation of the judge, perhaps from the conviction that no teacher could be found to instruct the poor deaf-mute, merely to prepare him for the gallows.

At a subsequent term of the court, the case was again brought up for trial, this time before Judge Boardman. The jury disagreed, and Bodine was left in jail. But, being quite docile and harmless when kindly treated, and showing no disposition to escape, as he had no home to go to, he was soon allowed liberty to go out by day, returning to his prison quarters at night.

There is not the least probability that he will again be brought up for trial. Meantime, he is left wholly without instruction, even the simplest religious instruction, for the rules of the institution very properly preclude any one from

being an inmate who has been guilty of serious crime against the person, and there is no one in the neighborhood of the jail qualified to undertake the instruction of a deaf-mute.

This recent case in our own vicinity, added to many more remote in time and place, points to conclusions which cannot be evaded. One is the duty which society owes to itself, not only of providing for the education of all deaf-mutes, but of making it imperative upon the parent or guardian, in each case, to secure to the child laboring under this misfortune the benefits within his reach. To him it implies vastly more than the same term used in connection with the hearing child, for the latter can never be said to be uneducated in the sense in which the deaf-mute is uneducated. To the hearing child every word spoken in his presence is a means of intellectual development. Every person, literate or illiterate, with whom he comes in contact, is for the time his conscious or unconscious teacher. In fact, school gives him so small a portion of the knowledge he possesses that it may be considered rather the regulator than the source of his attainments. In learning to read and write he simply acquires the ability to recognize and express, in alphabetical forms, a language he already knows; and in studying the other ordinary branches, if educated, he but learns a few principles which account for facts of which he is often already cognizant. And, if he never went to school, he would, under the influences prevailing in a good home or a virtuous and intelligent community, learn all that was necessary to enable him to lead a life of rectitude here, and secure the hope of salvation hereafter. To the deaf-mute, however, education means *everything;* it means home, and hope, and happiness. It means self-control and virtue. It means the full and free exercise of all the rights, immunities, and privileges which belong to humanity. Understanding and acknowledging his obligations to society and to God, he becomes amenable to law; and, if placed in circumstances in which his character or his conduct comes under the review of the ministers of justice, he is able, either by direct verbal communication, or by signs in which he can give full expres-

sion to his thought through a skillful interpreter, to conduct his defense and obtain all the consideration that is his due.

The State of New York has made full provision for the instruction of all deaf-mutes within its limits between the ages of six and twenty-five, and grants to those who commence at the earlier age sufficient time to make attainments which, when the intelligence of the individual is equal to it, fall little if at all short of those made by students in our higher seminaries of learning.

With a liberality, too, unequaled in this country, it has, in making this provision, given a choice of method and even of religion.

As the law now stands, all officers, charged with the care of those who, on account of poverty, are supported at the public expense, are obliged to place the deaf-mutes under their care at some one of the institutions for this class which the State has recognized. I would, however, that it should go further, and make it the duty of certain designated public officers to seek out all uneducated deaf-mutes and require that they be educated.

Another of the conclusions to which we are led is, that the treatment of criminal cases, in which a deaf-mute is defendant, should be settled by statute.

In every case that now occurs, the prosecution argues, from the intelligence the deaf-mute manifests in various ways, such as his ability to communicate by signs to a certain extent, or to obey given directions, and also from the indications he gives of consciousness of guilt, that he has moral and legal responsibility, and therefore should be brought to trial and punishment. The defense argues, on the contrary, that his condition as an uneducated deaf-mute, if acknowledged, being *prima facie* evidence of insanity within the meaning of the law, he cannot be put upon trial even to ascertain his mental condition. If the court fails to sustain the defense in its assumption, there follows a long argument as to which side must bear the burden of proof, in which so much doubt is raised by conflicting opinions that, as occurred in the case of Levi Bodine, in which two juries were empaneled under

different judges, one judge decides that it rests with the prosecution, and the other that it rests with the defense.

As it seems to me, both the prosecution and the defense are in error: the former, as to the fact that an uneducated deaf-mute can be considered responsible in any such sense that the law may visit his act with punitive treatment; the other, that he is to be classed with either the idiot or insane. Mentally and morally he is much more in the condition of a child, though his physical powers may be those of a man. And yet it may be conceived that both sides can base, if not *sound*, at least *plausible* arguments on the law as it stands. Whether this be so or not, the judge finds it difficult to expound the law in such a manner as to make it clear to the jury; and the jury, deliberating on a case which is novel in their experience, either yield to sympathies which are touched by the helpless condition of the prisoner, or terminate the case by a disagreement in their verdict.

Law is sustained by sanctions. But sanctions are worthless in the case of a human being who can never learn anything concerning them. An uneducated deaf-mute might come under the condemnation of the law and be punished, and yet his case could have no effect upon any other uneducated deaf-mute in deterring him from the commission of crime.

It would be a very simple and easy rule of law that the guilt or innocence of an uneducated deaf-mute should be established so as to amount to a strong probability, by testimony entirely independent of himself, and that, if he be guilty, he should be provided with a place of detention near some institution for the deaf and dumb, and receive instruction daily from such teachers as could be detailed therefrom; that, if innocent, he should be sent to the institution itself to participate in its benefits; and that, in either case, so soon as he was fitted by education to take his part in the great drama of life, he should be left free to do so, untrammeled by the fact that, at a time when he had not reached a point where he could be held morally and legally responsible, he had been brought face to face with violated law.

If this distinguished Society be induced, by the arguments that have been presented this evening, to urge upon the Legislature the enactment of such a statute, a practical result will have been secured of more value than the interest which necessarily attaches to the discussion of mental phenomena, however striking or peculiar.

APPENDIX.

CONSTITUTION AND BY-LAWS

OF THE

MEDICO-LEGAL SOCIETY.

CONSTITUTION.

Article I.

This Association shall be known as the New York Medico-Legal Society.

Article II.

Its object shall be the advancement of the science of Medical Jurisprudence.

Article III.

There shall be three classes of members, viz., Resident, Corresponding, and Honorary. Such persons only as are in good standing in either the medical or legal profession shall be eligible to membership. Physicians and Lawyers, who have been resident members, but who have removed from the city; any person who shall, by medico-legal or medical or legal contributions to the Society, or by a joint certificate of three resident members, furnish evidence of eminence in their professions, are eligible to corresponding membership. Physicians and lawyers of recognized eminence in their respective professions, whether resident or non-resident, are eligible to honorary membership. The number of honorary members shall be limited to twenty, and be equally divided between the two professions.

Article IV.

Resident members only shall be eligible to office and entitled to vote; all other rights and privileges shall be equally enjoyed.

Article V.

The officers shall be a President, two Vice-Presidents, styled First and Second; Recording Secretary, Corresponding Secretary, Treasurer, Librarian, Curator, and Pathologist and Chemist.

Article VI.

The President, or, in his absence, the Vice-Presidents, in their order, or, in their absence, a chairman *pro tempore*, shall preside and perform such other acts as are customary for presiding officers. The Recording Secretary shall keep the minutes of the proceedings of the meetings of the Society and of the Executive Committee; notify officers and members of committees of their elections or appointments, and members-elect of their election; certify official acts; and procure and sign, with the President, certificates of membership. The Assistant Recording Secretary shall keep a list of the resident members, issue the notices of the meetings, and, in the absence of the Secretary, perform his duties. The Corresponding Secretary shall conduct all the correspondence of the Society, except that with resident members. The Treasurer shall have power to employ persons, at the expense of the Society, to collect dues; shall have charge of all the money belonging to the Society, pay all its expenses by and with consent and approval of the Executive Committee; and shall present an account of the financial condition of the Society at its anniversary meetings, together with such suggestions for assessments and further expenditures as he may deem proper. The Librarian shall preserve and hold accessible to the members of the Society all its written or printed contributions. The Curator shall, when he may deem it necessary,

preserve, at the expense of the Society, pathological specimens offered to it, and prepare them for exhibition; and he shall subsequently take such measures as the Executive Committee may approve to permanently preserve specimens possessing medico-legal value.

Article VII.

The officers of the Society shall constitute an Executive Committee, to whom shall be referred all affairs of business except those prescribed for the Trustees by the laws of the State.

Article VIII.

Proposed amendments to this Constitution shall be made in writing at a stated meeting, and referred to the Executive Committee, who shall report upon them within three months. If approved by the committee, two-thirds of all the votes cast at a stated meeting shall be sufficient for the adoption of the amendments.

BY-LAWS.

Article I.

Section 1. The stated meetings of the Society shall be held on the second Thursday of every month, unless otherwise ordered by the Society, and special meetings at the time fixed by vote of the Society.

Sec. 2. Stated meetings shall begin at 8 p. m., or as soon thereafter as a quorum is assembled, and special meetings at the hour designated in their order.

Sec. 3. Ten resident members shall constitute a quorum for business.

Sec. 4. Five members of the Executive Committee shall constitute a quorum.

Article II.

ADMISSION OF MEMBERS.

Section 1. The names of candidates shall first be presented to the Executive Committee. If reported upon favorably by said committee, they shall be balloted for at the time the report is made, or at some subsequent meeting. Two-thirds of the votes cast shall be necessary for an election.

Sec. 2. Every resident member-elect shall sign the Constitution within three months after his election, and, in default thereof, said election shall be deemed void, unless a satisfactory excuse be given.

Article III.

Section 1. Each resident member shall pay an initiation fee of five dollars, which, with signing the Constitution, shall entitle him to a certificate of membership.

Sec. 2. There shall be an annual assessment of one dollar, unless otherwise regulated by the Society. But any member may commute such annual assessment by the payment of twenty-five dollars at one time, which excuses him from annual assessments for life, though he shall still be liable for his quota as a member for any extraordinary assessment the Society may think proper to order.

Sec. 3. Any resident member who shall neglect to pay his dues or assessments for six months shall be notified of the fact by the Treasurer; and should he for three months after such notice neglect or refuse to pay, his name may be stricken from the roll of members, at the discretion of the Finance Committee, which shall consist of the President, Recording Secretary and Treasurer, to whom all questions of indebtedness to the Society shall be referred.

Sec. 4. The ethical rules of the Society shall be the same as those governing the medical profession generally, and those adopted by the Legal Society of New York. The charges against members shall be made in writing to the Executive Committee, who, after due examination into such charges, may acquit, admonish, suspend, or expel the accused from the Society, as they may think proper.

Article IV.

All papers read before the Society shall be referred to the Publishing Committee, consisting of the President, Recording Secretary and Librarian.

Article V.

The annual election of officers shall be held on the second Thursday of October, the nominations having been made at the preceding meeting, and announced in the notices for the anniversary meeting.

Vacancies may be filled at any time by an especial election, the nominations to fill them having been made and announced in the same manner as required for the annual elections.

Article VI.

ORDER OF BUSINESS.

At the meetings the following shall be the order of business:

1. Reading minutes of preceding meeting.
2. Report of autopsies and exhibition of specimens.
3. Report of Special Committees.
4. Report of Executive Committee, and election of proposed members.
5. Paper of the evening and discussion thereon; but, at the anniversary meeting, election of officers.
6. New or unfinished business.

Article VII.

The report of autopsies and presentation of specimens shall be as brief as possible. The language of the reporter or exhibitor shall be free from technicalities, and made intelligible for non-medical members.

Article VIII.

These By-laws may be suspended or amended. Two-thirds of all the votes cast at a stated meeting shall be sufficient to suspend them. For their amendment the same rule and same vote shall be required as for amendments of the Constitution.

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