Criminal Responsibility in Relation to Insanity.—Discussion opened by H. MAUDSLEY, M.D. London.

Dr. MAUDSLEY opened a discussion on "Criminal Responsibility in relation to Insanity," in the Psychological Section of the Annual Meeting of the British Medical Association, held in London on 1st August, 1895. He said—I cannot help feeling that I am undertaking a task which is likely to be somewhat barren, for there is little to be said that has not been said over and over again, and will, I fear, have to be said over and over again; for, notwithstanding that the legal test has been condemned by eminent judges and that it has no foundation in science, it still flourishes in full vigour.

Now I take it that there are few, if any, medical men having a practical knowledge of the insane who would assent to the proposition, understood in its natural sense, that an insane person is responsible for what he feels and does when he knows the nature of the act and that it is a wrong act. The saddest cases, perhaps, of mental disease we have to do with are notoriously those in which a person is tormented with a strong and horrible impulse to do, perhaps does, what he knows and loathes as wrong; the driving impulse in him is so strange and contrary to his true nature and desires, so repugnant and yet so compulsive, that in former times no other explanation of it was deemed possible than positive possession by the devil or some other evil spirit. As I have said of this test elsewhere, it is founded on a very simple basis—that a man in convulsions is a strong man, and that he is culpable if, being conscious of them, he does not stop them. Consciousness of, is deemed to be the same thing as power to, control the impulses of a disordered mind; a will incapable of being influenced by knowledge of legal sanction the same thing as a will capable of being so influenced. The theory would have demanded in former times of a person "possessed of the devil" that, possessed himself, he should possess himself all the same, and master the devil in him or be responsible for the devil's doings. A rather unequal contest to put upon the man: the man against the devil with the devil in possession of the citadel of the man's being! Put the word "disease" in place of the word "devil," and you have the exact situation of the modern madman in relation to the legal test of responsibility.

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The test has its foundations, however, but they rest on wrong observation and on bad psychology. The observation from which they are derived is self-observation by sane minds, whence it results that a sane standard or measure of feeling and action has been made the measure of sane feeling and action. Could anything be more absurd? Surely the right observation should be the observation of abnormal mental states, observation of self in dreams, in hypnotism, and allied abnormal mental states; their mental disintegration furnishing the true standard of comparison for the vagaries of insane thought and feeling. I venture to think that no one who has reflected sincerely on his own mental states in dreams, remembering how strangely he feels and thinks in them and how entirely he loses possession of himself, can really believe that an insane person is always responsible for what he feels and does in the waking nightmare which madness sometimes is.

Again: the psychology of the test is fundamentally at fault. It assumes, or, at any rate, its defenders assume sometimes, that reason, not feeling, is the motive force of human action—that is to say, for example, a man falls in love from reason, and that, being in love, he embraces from reason, and that, after fit embraces, he proceeds further in the business from reason. Is not that a singular absurdity? The driving impulse, the propelling force, by which men are moved to act comes from feeling, not from reason. And so it is that a disordered feeling is capable of actuating disordered conduct without consent of reason, perhaps against all reason. The psychology which finds the motive force of action in reason, is very much like a science which should find the active propelling force of a steamboat not in the engine-room, but in the captain's orders or in the steersman's arm.

It will be contended, however, and properly, that reason, though it does not supply the actual motive force, is still capable of controlling and directing. No doubt within measure. Reason and feeling should be wedded into fit harmony; they constitute the two elements of a voluntary act, and cannot therefore do without one another, reason without feeling being impotent to act, feeling without reason being tyrannical in act. It is not true, however, to go on to say that reason can always control the desire when it knows its good or bad quality, when it can, in fact, appreciate the right or wrong of it. Nevertheless though experience teaches

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us that, legal theory will have it otherwise. It maintains that when that reason does not control mad impulses it is not really sound reason, does not *know* then what it seems to know and *thinks* it knows. The person had not actually the untainted consciousness of right and wrong in the particular case on the particular occasion which he seemed to have. His reason was affected without his knowing it. To save a favourite theory we are asked to give what is called a large and liberal interpretation to the word "know," to make it mean what on the face of it it does not mean—to say, as the late Sir James Stephen maintained, that if a man cannot control his conduct he does not really *know* what he is about, in the proper sense of the word. Well, so far as this somewhat subtle interpretation acts to prevent an insane person from being punished for what not he, but his madness, has done, it is worthy of all praise; but when it operates, as it may operate, to cause an insane person to be punished for what his madness does, it is not so praiseworthy. The fact is, it is too metaphysical for daily use, even if it were true. No person, however acute, can dive into the depths of another person's mind and find out, what he does not know himself, how far his consciousness of right and wrong is vitiated on a particular occasion; and it is not in the least likely that a common jury will be able or even attempt to make any such fine metaphysical discrimination; they will understand the test in broad and ready fashion to mean that he knew what he was about, and that therefore he ought to be punished.

Why, then, maintain a test which is so hard to understand, so easy to misunderstand, so false in science and so uncertain in application, so often interpreted by different judges in different ways, so seldom, I was almost going to say, interpreted twice in the same way by the same judge? Why bias wrongly the minds of the jury by a prejudgment of facts all of which ought to be left impartially to them? Such prejudgment is, in fact, nothing better than prejudice, and to so prejudge them is to prejudice the jury.

Moreover, it is of very doubtful legality. For what right in law has the judge to lay down a particular test of disabling mental disease? Is not that a usurpation on his part, an abuse of law? Are not all the symptoms of mental disease and all the tests of its existence and its degree in a particular case, properly facts for the jury? If so, then this ex-

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press interposition of a special test is an interference with the province of the jury and likely to prejudice a fair trial. What the judge does by imposing this special discriminative test is practically to instruct the jury, and to instruct them wrongly on matters of fact, and he does that without submitting himself as a witness to cross-examination. A particular test of disabling insanity is no more a matter of law than the test of a particular poison; it is rightly a matter to be proved in evidence like all other relevant facts.

So far, then, from being a help to the jury this judicial dictum tends to confound and mislead them. Were the court sincerely minded to give help it might do so in a simpler and more obvious way than by laying down a difficult and dubious test of disabling mental disease. It might take means to instruct the jury fully and truly concerning the particular form of mental disease in question, the nature of it, the bearings of it, and its damaging effects upon the mind. And it might do this in two ways—either by providing them with impartial and competent scientific evidence called by the Court itself, or by appointing a competent medical authority to act as assessor to assess the value of the conflicting scientific evidence given.

What an absurdity it would seem had not custom made it seem natural (as it makes everything seem natural) to expect a judge and jury, ignorant, say, of the very terms of a science, chemical or electrical, to be so adequately instructed during the course of the trial by what they hear then as to be able to give a satisfactory decision on a complex question of chemical or electrical science. If it be a question of navigation (when two vessels, say, have come into collision), about which every juryman who has been in a boat might be expected to know something, the services of a skilled assessor are called in, but when it is a question of complex science of which the jury know absolutely nothing, then it is left to the intuition of ignorance to give understanding. Of the judicial test of responsibility in particular, and legal procedure generally, we may say they are very ill-fitted to find out the truth and well fitted not to find it out.

For this condemnation of the present system we may claim, I think, the assent not of medical men only, but of the common-sense and conscience of the community, which, after all, is in a sort of tacit rebellion against it. For when a person whose insanity is suspected is condemned to death,

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what happens after his trial? Why, that the competent medical skill is then called in to give the competent and impartial help which ought to have been given at the time of the trial, and, in fact, to undo quietly in private what has been done with all the pomp and parade of justice wrongly in public. Nay, more. I notice from time to time nowadays that an insane person accused of crime is not put on his trial at all, but that someone in authority has or usurps the right to have him medically examined and sent to an asylum. Thus you see an Englishman is deprived of his most blessed privilege, the right of being tried by a jury when he is charged with crime. On mere medical evidence, on the evidence of a set of doctors, he is shut up for life, because of an offence for which he can never get himself tried.

So much, then, by way of criticism and from the medical standpoint. Now, let us try to look at the matter from the other side—from the legal standpoint.

Lawyers think, of course, that medical men are too ready to discover insanity when crime has been done, and to claim irresponsibility for everybody who suffers from any sort or kind of insanity—in fact, to make crime insanity. Not entirely without excuse. They judge by what they see in courts of justice; and what they see, unfortunately, is this, that there is no case, however weak and indefensible, that does not for some reason or other find medical support. They put down, therefore, to unsound theory what is really unsound medical evidence, evidence obtained by hook or crook under the present system of procedure, and which any competent medical authority would in many instances instantly reject as worthless. They hear the opinion of him who presses forward to give the evidence; they do not hear the opinions of those who, having been urgently asked, have refused to give that evidence. Naturally, therefore, they conclude one of two things: either there is no such thing as exact medical science, and, therefore, it may be disregarded, or that there is no such thing as exact medical honesty; and the result is that scientific evidence, which ought to be decisive in cases of the kind, is, I am afraid, the most discredited of any kind of evidence given in courts of justice.

Another circumstance which justifies in some measure the legal criticism is this—the common medical habit of discussing the question of responsibility in relation to insanity in the abstract, as if insanity were something definite and constant, something which is altogether or not at all, and

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which, being there, ought to annul responsibility. One might just as well, I think, discuss whether bodily disease in the abstract ought to prevent a man from walking five miles a day. The truth is, of course, that there is no such definite entity as insanity, that there are really as many insanities of mind as there are modes and degrees of its derangements. It is, in fact, with insanity in the concrete, in the particular, not with an abstraction, that we have properly to do; and just as one bodily disease ought and another ought not to prevent a man from walking, or doing one thing when he may do another, so one kind of insanity ought to abolish a responsibility which another does not. The right question is, of course, as to the disabling effect of the particular form and degree of insanity in the particular case in the particular circumstances.

As to this disabling effect, this is not the proper occasion to discuss the degrees of disabling moral and intellectual damage done by the various forms of mental disorder, some of which, after all, are not so much states of actual disease as bad habits of thinking and feeling grown into mental deformities. What I venture to make here is a protest against the assumption that insanity in the abstract, meaning thereby all forms and degrees of insanity, ought offhand to be deemed irresponsible.

And I take, or make, the occasion to utter another protest —a protest against what I venture to consider the lamentable extravagances into which some disciples of the latest school of criminology have been betrayed. I should be loath to say a word to disparage or discredit the scientific method of studying insanity—I was one of the first to advocate it—or to disparage for a moment the good work that has been done in that direction; but of unripe observations and sensational theories I hope it is not too much to say that although they make the vulgar stare, they make the judicious grieve. Science on the platform is very apt to run into demoralization; the performers are under strong temptation to play to the gallery and so to burlesque science.

To say that there is a criminal nature which is degenerate is one thing, a true thing; but to go on to say that all criminals are degenerate and bear on them the stigmata of degeneracy is another and, I believe, quite false thing. I do not see for myself why crime should necessarily be degeneracy. I can conceive a murderer being a nobler animal than a saint of the Pecksniffian sort. The murderer on a big enough scale,

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big enough to despise the fools whom he uses and sacrifices for his ambitious ends—what is he? Why, he is a hero. Criminals there are certainly of defective bodily and mental structural formation, beings who, if not protected against themselves, must do wrong. That we all admit. There are criminals, again, who are more or less insane in the statutory sense, and who, therefore, are explained and excused by their insanities. But there are criminals also who, I venture to think, in other circumstances might have been as great saints as, in the changes and chances of things, they became great criminals. For assuredly the external factors and circumstances count for much in the causation of crime. Time and chance happen to all men, and no criminal, to my mind, is really explicable except by a full and exact appreciation of his circumstances and nature and of their mutual interaction. For my part I sometimes wonder whether the same enthusiasts would have found the stigmata of degeneracy in Saul, the fiery persecutor of the early Christians, and found them gone when, transformed from iniquity to holiness, he became Paul, the great Apostle of the Gentiles.

Has not the theory of degeneracy been somewhat abused of late? As used by Morel the term had scientific meaning and value; but of late much has been done to rob it of all definite meaning by stretching it out to cover all sorts and degrees of deviation from an ideal standard of feeling and thinking; deviations, in fact, which range from mere morbid habits of thought and feeling down to the worst idiocy, and some of which are no more signs of morbid degeneracy than are long noses or short noses, long legs or short legs.

It seems to me that the conflict between law and medicine, which has been going on so long, might end soon if words and theories were swept clean aside and both parties were to look the facts sincerely and squarely in the face. Let the lawyers—why should they not?—renounce unreservedly their discredited test of disabling mental disease, and submit all the facts in a particular case to the jury to decide upon. Medical men also, on their side, should discard the notion, so far as it is entertained, of insanity in the abstract, and leave off talking as if it were something definite and constant which annulled all responsibility. To place before the court as plainly as possible all the facts of the particular form of mental derangement in the particular

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case, to explain what these facts mean according to the best scientific information, and how far and in what way they damage the mental functions, then to leave the matter for the court to decide—that, it seems to me, is the proper medical function. For the question of legal responsibility is, of course, a legal, not a medical question. As witnesses we have nothing whatever to do with the rights or wrongs of the law, though we may, of course, criticize it properly as citizens. The business of every society is to protect itself, and it has the might, which for it is always the right, to make what laws and inflict what punishments it likes for its own protection. Naturally each society will think its punishments and laws most right, the laws of other societies less right, if not ridiculous often; but be the enacted law right or wrong, the individual, in whatever social medium he is placed, must obey it or suffer the penalties of disobedience; for he lives for the society, not the society for him, and, living for it, he must die for it, even though he be insane, if it think fit.

What, then, for us is the conclusion of the whole matter? So far back as I remember we have been criticizing the legal criterion of responsibility, condemning it by formal resolutions, petitioning for commissions of inquiry into it, and demanding more or less clamorously its abandonment; and we are still voices crying in the wilderness that must go on crying. However, we have made some advance; we are not quite where we were. We have seen it condemned repeatedly by the best, justified only by the worst, judges; and we have had an interpretation of it by the late distinguished judge, Sir James Stephen, which, if it does not radically change its meaning, makes it include practically all that we ask for. If this test really does include, as he says, not only (1) knowledge of the nature of the act, and (2) knowledge that it is a wrong act, but (3) power of control to do or not to do it, then I can only say that it is a pity that all the judges do not understand it so; a pity, too, perhaps, that Sir James Stephen did not take steps to have his construction of it tested, as he might well have done in a way suggested by himself, namely, by directing the jury according to it in a particular case and then stating a case for the Court of Crown Cases Reserved. He would thus have obtained the opinion of his brother judges as to his construction of the test. Perhaps, knowing their conservative minds, he feared to shock them, and preferred to allow the

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doctrine to infiltrate gradually, as we hope it may. One may suspect, too, that he himself, though direct and thorough enough in his thought about other things, was still in legal matters in love with the good old habitual way of the English mind—namely, to keep up names after the meanings have been taken out of them, or, perhaps, a new and entirely opposite meaning put into them; to accept the gradual dissolution of the substance of a belief so long as the label on it is left intact.

Dr. NICOLSON being called upon, said—I think, sir, that the Psychological Section of the British Medical Association is to be congratulated on having drawn our learned friend from his privacy to hold the balance between the one side and the other with that unfailing breadth of view and that precision of expression in which no one, judge or doctor, can rank with Dr. Maudsley. He has put the whole matter in a nutshell. He has told us that we must not place too much reliance upon the abstract, that we cannot be too careful in dealing with the individual case, that we have to take into consideration not only the mental condition of the criminal, but the actuating motive and the influences of his surroundings. It is a most wholesome thing, I am sure, after our experiences elsewhere last week, when we seemed to be approaching a certain amount of warmth, to have listened to this sobering address. We shall now be able to take up this subject with due consideration for the opposite side. I am bound to say that Dr. Maudsley has left very little room for argumentative discussion, because we must feel that what he has said we are bound to accept—it is so fraught with common-sense and judicial thought. There are individual portions which we individually might prefer to see amended by the introduction of methods other than those which he suggests. The first that occurs to me is in connection with the difficulty of deciding the question of insanity before trial or at the time of trial. Thus, for instance, if you ask a man beforehand how he committed the act alleged, so as to get from him his very inner soul on the matter, you rob him of the right of every Englishman, sane or insane—the right to plead "Not guilty." That is a very essential point. I think Dr. Blandford will recollect a case in which, had such a course been followed, extreme injustice would have been done—the case of a man who having escaped from an asylum was assaulted by an individual whom he killed. It was an undoubted case of a madman shooting another person in self-defence. If there had been a commission of inquiry into that man's condition before the trial, of necessity his mouth must have been shut, and he would have been condemned as a *criminal lunatic* when he really was an ordinary lunatic. By having his case represented in court he was able to secure a verdict of "Not guilty," which is an extremely important point for the individual himself and for his relations, as well as a matter of justice. The actual occurrence of such a case must, to my mind, cast doubt upon the propriety of condemning, or, at least, of certifying a man to be insane before he has had the opportunity of pleading "Not guilty." Therefore, what very often appears to be the most desirable course, on further consideration is absolutely negatived. That is an instance of the individual case, as against the general question, which we are bound to keep before us before proclaiming that we have found a solution of the difficulty. In such cases as I have instanced there is the evidence of the man himself, which we may or may not get before the trial, but which, after the trial, and, let us say, condemnation, we are able to get—the full and minute history of the circumstances; there is also all we are able to get as corroborative of what the man may have told us—for instance, the testimony of his wife, which cannot be had in court. To authorize the court to call in as witness the wife of a man being tried for murder—for it is chiefly murder cases that attract our grave atten-

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tion—either in support of his guilt or his innocence, or in support of his insanity or sanity, would be the introduction of a terrible complication for those trying to arrive at a proper finding. Those two points are enough to emphasize the injustice of compelling each case to be finally decided in court in regard to sanity or insanity, and to show that there is a good deal to be said against what appears to be extremely plausible. We may be unable to approve the insufficient and inadequate questions that are put to the jury; but we have still the difficulty of finding anything adequate to replace them. We must meet the law; we must meet the common opinion, and we have to be careful not to arrogate too much to ourselves while there is more difference between ourselves than there is between us and the lawyers. We are scarcely in a position to say "This is all wrong" until we can offer to put it right. We have also to remember that it is only in cases where reasonable doubt exists that the judges insist upon the legal test; never in cases of women. I think that by maintaining a calm demeanour we preserve our own dignity, and are the better able to carry out that process which is already far advanced—the education of the judges into the acceptance of the medical view.

Dr. MERCIER—I am afraid, sir, we are losing ourselves in generalities, and would beg to focus the discussion to a definite point. I gather that the dissatisfaction expressed is with the terms of the law, the actual wording of the law. Now, with regard to the terms of the law, it has been said that it is possible to drive a coach and six through any Act of Parliament. Certainly through the terms of this law, as contained in the answers of the judges to the questions put by the House of Lords, it is easy to drive a regiment of cavalry. These answers are as full of blunders of grammar and blunders of logic as any composition could be. At the same time I am not prepared to suggest anything better; and for that I will give my reason. We have not, I think, to regard the wording of the law. That is a matter which really does not concern us at all. What we have to regard is its practical effect. If we are to go to the legislative body and demand an alteration of the law, upon what grounds can we possibly make such a demand? What shall we be asked? We shall undoubtedly be asked this question—If the law is as bad as you say, what instances of injustice having been done under it have you to show us? If the law works badly, if it is an injustice, we shall be told, You have good ground for demanding an alteration in it; if you cannot show any instances of injustice which have actually arisen under it, then there is no reason for such an application. Well, sir, this is a matter into which, during the past year, I, in common with other members of a committee appointed by a sister society, have entered very carefully, and I find myself in the position of Saul among the prophets. I entered upon the question with a strong preconceived prejudice against the law, and against its administration; I am not ashamed to say so. I have been brought up in medical circles, and medical circles are steeped in prejudice against this law. We went back to the facts of many years, and the upshot of our investigations was that we failed to find that any such injustice had been done to insane offenders as would form the ground of any hopeful application for any alteration in the law. Imperfect as the wording of the law is, we have to look to its practical effect, and the practical effect is that justice is done. We are not a court for the revision of the drafting of the law; all that we can do is to suggest alterations in its general sense. It has been said by Dr. Maudsley—I think I am quoting his very words—that what should be desired is that all the facts should be impartially submitted to the jury, and that the jury should be told what the facts mean. Now, sir, I maintain that is actually what is done under the present system. The facts are submitted to the jury in the most impartial way, and the jury have ample opportunity of knowing what these facts mean. I have here reports of cases which have occurred during the past week at the present assizes; and since it is said that doctors have their mouths closed and are not allowed to give the evidence they think right, I will read one or two short extracts to show what immense latitude is, as a matter of fact, allowed to the medical witness in the witness-box. In one case of murder, tried at the Yorkshire Summer Assizes, July 24th, a medical expert gave this

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evidence in the box:—"I have had a large experience of lunatics; I have examined the prisoner, and have arrived at the conclusion that he has a very strong neurotic family history. By neurotic I mean a person in whose family history there have been one or more cases of insanity, epilepsy, St. Vitus's dance, or hysteria. The prisoner, in my opinion, is a typical neurotic, judging not only from his hair, his eyebrows, the shape of his ears, the twitching of his hands, but particularly from the shape of his teeth and his hard palate. The prisoner gave me a particular account of what happened. He told me he had a very severe headache during the week before the murder." When evidence of that description, sir, can be given in the witness-box on behalf of a prisoner, I do not think it can be said that judges are unwilling to admit any evidence whatever which could possibly be considered as favourable to the prisoner's insanity. [Dr. MAUDSLEY: "*That* judge was not."] Quite so. Very well, sir, I take that criticism; and I agree, if any case can be brought forward in which a prisoner was condemned owing to the exclusion of medical evidence at his trial I am willing to reconsider my position. With regard to placing the facts before the jury I maintain that, as a rule, the medical witness is allowed to express his opinion in the widest possible way, that he is never, or scarcely ever, stopped. There is one case, I know, in which both Dr. Weatherly and myself were concerned, in which the medical witnesses were very strictly tied down to the actual terms of the law as given in the answers to the judges. But in that case the prisoner was acquitted; and, under these circumstances, I again say that the ground for an alteration in the law falls away from beneath our feet. If we can show prisoners who have been improperly *convicted* owing to the exclusion of medical evidence, then we have a strong case; but I must confess I have failed to find such cases. On the contrary, I quote to you another case which happened last week, in which the medical witness was allowed to say: "From observations of him during the time he has been in prison, I do not think that at the time he was alleged to have killed his wife the prisoner was able when committing that crime to distinguish that he was doing a wrongful act." Now, that is the very question in the very terms that has to be put to the jury. The jury is to determine whether at the time that he committed the act, and with reference to that particular act itself, he knew right from wrong; and when a medical witness is not allowed to state his opinion it is on the ground that he must not be asked the question which is to be put to the jury. But here, and in many another case, the medical witness has been allowed to answer that very question in the very terms in which it is put to the jury. Under these circumstances I do not think it can be said that the medical witness has his mouth shut. Another point put by Dr. Maudsley is that doctors of an inferior stamp, gentlemen who do not carry authority, push themselves into these cases and place themselves in a very prominent position, and that doctors whom we should all respect refuse to give evidence. I think that Dr. Maudsley, as a representative of the profession, had better left that unsaid, for it does not reflect credit upon us that the men whose great authority might make the difference between life and death to a prisoner refuse to give evidence, and leave that task to gentlemen whose opinions do not represent those of the profession. If there is such a beam as that in our own eyes how can we see clearly to pluck out the mote from the eyes of the judges?

Dr. WEATHERLY—I have listened, sir, with the greatest pleasure to Dr. Maudsley's able address. He is not satisfied with the present condition of the law as Dr. Nicolson, Dr. Orange, and Dr. Mercier are. [Dr. Nicolson demurred to this interpretation of his position.] I do maintain with Dr. Maudsley that the present legal test should be absolutely swept away; but I do not suggest that no legal test should be enforced. I think that each individual case should stand on its own merits, that the evidence given in the court should be evidence to bring out every scientific fact with regard to the individual case, and more especially that it should be conclusively proved not only that the man is a lunatic, but that the crime is the outcome of his lunacy. What I maintain is not that *certain* judges do not give enough latitude to medical men, but that they do not *all* give that latitude. Why should we be content with that? As Dr. Maudsley wrote many years ago, it amounts simply to the tossing up of a shilling as to which judge the unfortunate prisoner is to be tried before. We have heard to-day that

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justice is done to the prisoner. According to Dr. Nicolson, justice is done in the condemned cell. If justice is done to the criminal in the condemned cell, then an injustice has been done to him in the court of law. It is ridiculous to say that it is justice to sentence him to death, because someone is going to look into his case and give evidence *not on oath*—someone who, before judges, would only have been able to give testimony that would send the man to death. I do not consider that a proper mode of doing justice. I have read the "Journal of Mental Science," and noted that Dr. Hack Tuke repeatedly insisted on the first importance of the examination of prisoners by a competent medical man as soon as possible after the crime is committed. Dr. Nicolson tells us that is radically wrong—that he should be examined after he is condemned to death. [Dr. Nicolson again demurred.] That is what I understood, sir. There are many cases where a man is insane, and his insanity can be clearly proved at the time of the criminal act, but where, having been kept in prison for a time under regular dietary and so on, all symptoms of insanity will have vanished. Dr. Mercier has asked us to bring forward cases where injustice has been done. Surely Dr. Savage will recollect such cases. The men were not hung, but were condemned to death, although ultimately reprieved. Dr. Mercier has spoken about medical men refusing to give evidence. I understood Dr. Maudsley to say that leading men had refused in certain cases to give evidence because they knew that the evidence could not be in favour of, but against the prisoner. One word in conclusion. All that we all want is that justice should be done to the insane criminal. I think that can only be done by all the judges allowing all the scientific facts to be brought before the jury. I am not disposed to believe that it would be right to have an assessor. I do not think that would be allowed in England. It would relegate to an assessor the duty of a jury. We have also talked too much about capital crime to the exclusion of the numerous lunatics sentenced to short terms of imprisonment who come out only to repeat their criminal acts. This most important point has been emphasised by the latest prison reports, and deserves our attention.

Dr. NORMAN KERR—It seems to me, sir, that certain members of the medical profession have forgotten that judges have something to say for themselves. I think that the province of medical men is simply to give evidence, and it is for the judges and jury to see that it is properly considered. This is illustrated by the history of one form of insanity, delirium tremens. In 1867 Lord Deas, a Scottish judge, seemed to have been the first to recognize that there was disease underlying this condition. A landed proprietor was accused of murder, and Lord Deas allowed a reduction of the charge from murder to culpable homicide, an example which has since been followed in increasing proportion in Scotland and elsewhere. Amongst other cases in which a person was executed for a murder committed during delirium tremens, was one tried before Mr. Justice Manisty in 1878. That was the beginning of medical testimony with regard to this charge. If we come down a little later we observe an advancing recognition of the proved results of modern medical research. And only last week Mr. Justice Hawkins advanced a step further in connection with the case of Regina *v.* Adams, in which a farmer was tried for murder whilst suffering from delirium tremens. Mr. Justice Hawkins is reported to have said: "He looked upon drunkenness as no excuse for crime when that crime consisted of an unlawful act; but if a man by his frequent and constant indulgence in drinking caused such injury to his brain as to create disease within his brain—it may be that the disease was not permanent and recovered from time time, as, for instance, in a case of delirium tremens—if during the period during which delirium tremens existed a man did an act which otherwise would be a criminal act, but by reason of the temporary delirium tremens he did not know or was prevented from knowing the nature and character of the act which he did—if it was a wrong act—in that case his labouring under a defective reason or disease of the mind, called delirium tremens, would exempt him from the criminal consequences of his act; just as in the same way as with an ordinary insane person from the visitation of God or pure accident the law applies to the man who is suffering from delirium tremens, precisely in the same way as a man who is permanently insane." The issue was that the man was acquitted of

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the crime on the ground of insanity, and has been sentenced to be detained during her Majesty's pleasure. What was first used as a plea for reduction is now used as a plea for acquittal. If we have judges who do this in the case of temporary insanity, have we not the greatest hope that there will by-and-bye be such a further evolution in the judicial mind that no person will be convicted where he is proved to be suffering under any form of insanity. We, therefore, instead of bearing too hard upon legal administrators, who were in a position of great difficulty and had not yet received a unanimous or even preponderating opinion of the medical profession, ought to believe that in the future, as in the past, there will be the most thorough recognition of all forms of medical evidence on the subject of insanity.

Dr. SAVAGE—With others I feel, sir, that I must congratulate Dr. Maudsley on the paper he has read to us. Of course I praise it because I agree with him. I wonder that more has not been said on the scientific side—for instance, on the very important question that there is a difference between the motors of mind. Dr. Maudsley has pointed out how frequently an act follows a feeling and has no real relationship to will, the power of control being lost; and he has referred to love as the outcome rather of feeling than of reason. All of us, especially those practising among the insane, recognize the power of feeling and the powerlessness of reason. Man is not altogether a reasonable animal; in fact, there are grounds for thinking he is rather a non-reasonable animal; and one feels that the attempt to gauge his responsibillty by taking reason into account rather than feeling is wrong. One danger is that we, not being satisfied with the definition that has been submitted by the law, may be induced to produce another definition; but I think that if we get rid of the dogma that consciousness of right or wrong is the test of responsibility, we shall not be weak enough to substitute any other. I was very much struck with what Dr. Orange said to me the other day. "I do not believe," he said, "in criminal insanity." It was an astonishing statement. "I believe," he said, "in the criminal insane." That is practically what we are coming to—that every individual is not to be tested by a standard of insanity or criminality, but by the conditions which have led up to it. Most emphatically do I agree with Dr. Maudsley when he speaks of the harm that may be done by believing too much in this new science of criminology. One believes that a man is a potential criminal just as he is a potential saint. There are certain individuals who are degenerate, but it is not enough to say that a man is degenerate to prove that he is irresponsible. We want to do away with the present test. We are a rather conceited profession; we believe we know the truth, and that people should bow down and accept our dogmas. The public have only a partial belief in doctors; they believe in themselves, and therefore I am afraid that the idea of having medical assessors who would, in effect, assume the functions of a jury, would not fall in with the common-sense of the English nation. We have got to do with insanity and criminality and a jury; and I believe what Dr. Maudsley has said, that we want to be able to prove up to the hilt what we know. I entirely agree with Dr. Weatherly that it is unfortunate that judges differ from one another so materially that, whereas one will allow you to say definitely "Having examined A. B., I have come to the conclusion that he is of unsound mind," another summarily stops you. "That is not for you to judge,' he will say; "you have only to give facts." What we maintain is that the medical witness ought to be permitted to state the evidence clearly; that during the trial all the points indicating insanity and all the probable points in favour of the insanity of the prisoner should be brought out then; that the whole case should be tried and decided then, and not left to the consideration of a Home Secretary whether anything more can be done. In fact, we feel that, after all, we have to bring before the court the evidences of insanity, and that we must let the jury decide whether the insanity was sufficiently related to the crime to render the man irresponsible. And I cannot go as far as Dr. Norman Kerr, who appears to me to say that every person who can be proved at any time to have had any kind of insanity, and having any kind of insanity to have done a criminal act, is, in consequence of having had the stigma of mental unsoundness in any degree upon him at the time when he committed the act, to be therefore irre-

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sponsible. [Dr. NORMAN KERR: "No, only during the time of his temporary insanity."] Well, but even that I cannot accept, nor will the British public consent under all conditions to relieve a man from the responsibility for a criminal act.

Dr. CLOUSTON—Mr. Chairman, Dr. Mercier asks for a single instance of injustice done under the present condition of the law. There is not only one instance, but so many that they cover half the number of people who have been solemnly condemned to death in this country. We find, as a matter of fact—and I quote it on the authority of Dr. Nicolson—that about one-half of all the criminals who have been tried and condemned have been found on medical evidence to be insane and relegated to Broadmoor Asylum. I say this is the most gross injustice, because in every one of these instances the evidence of insanity existed and was not submitted to the jury. I remind the meeting that there are five different courses adopted under the present system. The first is that, before the trial, the gaol surgeon, seeing a *primâ facie* case of insanity, reports to the criminal authorities, and the man is then and there certified by two medical men to be insane and sent, not to Broadmoor, but to the ordinary county asylum. I do not know, sir, what happens in England, but, as is extremely common in Scotland, I constantly receive murderers from the Edinburgh gaol as ordinary lunatics, and for whom I do not profess any special responsibility whatever. This, I think, is an eminently common-sense course in cases of acute mania or melancholia; and the reason for this procedure is that the criminal authorities recognize that the man cannot be properly treated for his disease in gaol, so they send him to Morningside. The second course is that, before the trial, the question as to whether the prisoner is able to instruct counsel is decided. In England this is placed before a jury; in Scotland the judge decides it. Medical evidence is brought forward. In Scotland, and now also in England, I understand, the Crown sends for one or two medical men who know something of insanity. They examine the case and are told by the Crown, "We simply want the facts; we don't want prejudice; we don't want to hang the man or to let him off." Evidence as to the man's sanity or insanity is therefore given, and I fail to understand the great importance which some attach to the set form of words to be put before the jury. There is no set form of words. Was the man insane? Was the man responsible when he did the crime? But we are subject to cross-examination. Our facts are placed before the judge or jury, and are taken for what they are worth. The third is the course so much in question, where the man is tried; and whether there is or is not a *primâ facie* case; it often happens that no evidence is really brought before the jury as to the prisoner's mental condition. In other cases the evidence is conflicting, and—a most important point—in the ordinary course no special pains up till recently was taken by the court to secure such medical evidence as would have weight and authority, and would be absolutely impartial. This is the point that seems to require remedy. And in connection with that I cannot help referring to the fact that nowadays our gaol surgeons are required to know something about mental diseases and their treatment. I believe, sir, that if our gaol surgeons had been, and were now, fully instructed in this matter, half the scandals which have arisen would never have taken place. And with regard to the evidence to be given I may say that I do not agree with those who say that the employment of assessors will scarcely work in this country. They are regarded with some suspicion, and they are undoubtedly free from cross-examination, except quietly by the judge—the public do not feel that they have been subjected to that process which we call cross-examination. But what, sir, can be the objection, not only before the trial but during the trial, for the court, if there is any case made out for insanity at all, to appoint two medical men to examine the case—even after the trial has begun (I have seen it done), and let these men be put in the witness-box to give their evidence and be cross-examined. They come with a certain air of impartiality; it is known they are not employed for either side, but are there simply to explain the facts. The fourth procedure brings forward a question which I am surprised has not been alluded to. Is it a light thing, Mr. Chairman, to have the verdict of her Majesty's pleasure passed on anybody, and to have to go to Broadmoor under

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the kindly and judicious care of Dr. Nicolson for the whole term of one's natural life? [Dr. Nicolson denied this statement, and stated that six or eight were discharged from Broadmoor every year.] Prisoners will beg for imprisonment in preference to Broadmoor or Perth. I think "Her Majesty s pleasure" verdict is one that has been far too rigid in the past. It should not mean Broadmoor or Perth alone, but a county prison, the prisoner to be afterwards restored to his liberty and work in the community. There was lately the case of a boy who set fire to a public school. My position and that of my colleague, Sir Henry Littlejohn, was this, that the lad was practically an imbecile; there was postponed development of his controlling faculties; and that there was every reason to suppose that, by education and developing, he would become an ordinary responsible member of society in a year or two. There was a consultation between the counsel for the prisoner and those for the Crown before the trial. One thing impressed me. Everybody said, "Don't make him out to be insane or irresponsible. Let us plead guilty and trust to the mercy of the judge." But then much depends upon the particular judge. And that is really the question. We should not have the personal equation coming into the calculation at all, it should be eliminated as far as possible; we should not have to trust to chance. The lad, however, pleaded guilty, and Sir Henry Littlejohn and I were called into the witness-box and allowed to give evidence of the lad's mental condition in modification of sentence. This is a most illogical proceeding, but is it not the common-sense proceeding, and would it not in any case meet the circumstances? The public was satisfied with the result, and that, after all, is what we have to meet. The fifth case is the worst of all; but, unfortunately, we cannot object to it. It relates to the prerogative of mercy. The man is sentenced to be hung, and then an irresponsible medical man is sent down to examine him and report, the case resting with the Crown. With regard to these matters I would sum up by saying, Let us claim that responsible medical men should be selected by the court to make a report subject to cross-examination during the trial. With regard to alcohol, sir, there is a very curious fact. If a man drinks for a fortnight and delirium tremens ensue, during which attack he commits a crime, he is found not guilty; but if he gets drunk and does the deed while in that condition, he is condemned. This seems unreasonable. I am quite certain that, in attempting to discuss the general question, we should simply say badly what Dr. Maudsley has said supremely well. The only point in which I differed with him was in his somewhat disparaging dealing with the modern science of criminology. I admit that criminologists have made an extraordinary number of mistakes, and that a great many of them are extremely foolish persons, but I think we should most carefully guard against throwing cold water on this new study, which will result in very great benefit to the public.

Dr. SHUTTLEWORTH—I wish to call attention to the responsibility of those suffering from imperfect development of the brain and mind; and more especially of those parts of the brain which are inhibitory in respect of moral conduct. A considerable amount of prominence has lately been given to this subject by the occurrence, not only of the case cited by Dr. Clouston, and the case of a well-connected youth in London, but also of crimes of a sexual character which, no doubt, are to a certain extent connected with imperfect moral control, really of an organic character, dependent, I mean, upon imperfect development of the brain. The difficulty with these cases very often is that it is only a partial arrest of development. Intellectually these cases are sometimes very fairly advanced. The cases of moral imbecility one is called in to advise upon, are most difficult. There are the cases, for instance, of children whose education goes on to a considerable extent, and who are able perhaps to take part in the curriculum of a public school; but they steal and lie and even set their school on fire. If these cases come into court the result is most uncertain. This fact very much impressed me in connection with an experience I had when Medical Superintendent at Lancaster, when one of the patients, an imbecile youth, being habitually waked up at night by another patient pulling the bedclothes off him, got up and knocked his tormentor down on the floor with such violence that the skull being thin gave

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way. The case was ultimately tried by Mr. Justice Stephen, who, with his usual acumen, simply called upon me to state whether the boy was able to understand the nature of the criminal proceedings which would follow such an act. He did not ask me whether he understood the nature of the act. I was able to say that he was perfectly unable to understand the proceedings necessary for his defence in a criminal trial. He merely bound him over to appear when he should be in such a state of mind as to be able to go on with the trial, and the patient was committed to the care and responsibility of his father. I quite agree that in some cases of moral responsibility so-called it is rather a dangerous doctrine to say that such cases should entirely escape from punishment. I think myself that "knowledge"—quoting now from Mr. Justice Stephen (Vol. ii., Chap. XIX., p. 155)—"has its degrees like everything else, and implies something more real and more connected with conduct than the half knowledge retained in dreams. This last observation is specially important in connection with the behaviour of idiots and persons more or less tainted with idiocy. Such persons will often know right from wrong in a certain sense, that is to say, they will know that particular kinds of conduct are usually blamed, and will be punished if detected, but at the same time they may be quite unable to appreciate their importance, their consequences, and the reasons why they are condemned, the suffering which they inflict and the alarm which they cause." So far as I have seen with regard to the special class of imbeciles coming before the courts of justice, although the procedure is bad the results are not so bad as might be expected, because the judges are ready to receive evidence of arrested mental development and also to take into account the environment, which often make the difference between criminality and irresponsibility.

Dr. YELLOWLEES—Why is it, sir, that we see so repeatedly this unjust and anomalous thing—a man publicly condemned to death and afterwards acquitted on private investigation? I believe the real reason to be this, that both juries and lawyers are still under the conviction, which Dr. Maudsley so properly condemned, that there is a hard and fast line between sanity and insanity, and that a man must be either quite mad and quite irresponsible, or quite sane and answerable to law in all things. In reality insanity, like all other diseases, *varies greatly in degree*, and I believe that only in recognizing this do we get the true solution of the difficulty. I am very thankful that it has already been to a considerable extent recognized in Scotland. First of all, it has been often recognized by the Crown consenting to receive a plea of manslaughter instead of murder, leaving it to the judge to modify the penalty as he thinks fit. It has been recognized by the verdict of juries recommending the man to mercy on account of his mental condition, although they could not acquit him. It has been recognized, too, in the verdict of the judge. It has been recognized in a yet more important manner in the case of Laurie. After his trial and condemnation the verdict was reviewed by the Crown. There was no question about the committal of the deed. The plea of insanity was never raised at the trial. But after investigation by the Crown and report subsequent to the man's condemnation the result was, not acquittal on the ground of insanity, but a commutation of sentence to penal servitude. That is to say the man was condemned, held guilty and punished, but not punished to the same extent as a perfectly sane criminal would have been. I believe very strongly that only by recognizing this great fact that insanity is a thing of degree, and that partial insanity should imply only partial responsibility and partial guilt, only thus is any practical solution of this matter possible. Some one will say, how can we measure human responsibility? Well, we cannot. But, after all, what is human justice but a rough attempt to do this, and to assign the penalty which each case demands? Only omniscience can judge perfectly, but I believe that practical and right results will ensue on a recognition of this central truth.

Dr. USSHER (Australia)—It may interest the members of this section to hear that in Australia it is no uncommon thing for a prisoner to call through his counsel for the appointment of a board to examine him before trial for a capital

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offence. In the case of Colston, who murdered a man and his wife subsequent to a debauch, prisoner applied for this. The Treasury were against it, but his trial was held over for four months, during which period he was under observation. Three examined for the Crown and three for the prisoner. I was for the Crown and favoured his trial as a murderer against the supposition that he was insane. He was ultimately hanged. In another case, owing to the evidence that was being given by two gentlemen, a magistrate suspended the sittings for four hours, during which he called to his aid two specialists to examine the prisoner before he would go on with the case. In the end the prisoner was acquitted.

Dr. OSCAR WOODS—I am puzzled by certain statements made to-day. What is the practical effect of the present law? Dr. Mercier asked. I do not wish to say it is bad, but, at all events, it is uncertain. I venture to say that in nine-tenths of the cases mentioned by Dr. Nicolson, and which he has been asked to examine after trial, there was a miscarriage of justice. Evidence was brought forward then which ought to have been led at the trial. If in England and Ireland there were a universal adoption of the Scottish procedure, and all the judges acted similarly, I do not think there would be much reason for complaint; but, while the criminal has to run the chance of being tried by one or two judges who will not allow the medical man to give his evidence fully and who will not lay it before the jury leaving them free to judge what deductions should be made from it, I think it is unfair. Dr. Mercier is anxious to have cases cited. He will recollect that last year I instanced a man, tried for murder, in whose case the judge would only allow the question to be put exactly as it was decided in the M'Naghten case—"Did the man know the difference between right and wrong?"—and he would allow no other evidence to be given. When the jury showed extreme disinclination to find the verdict he three times recalled them, read the law, and said they had no other course than to acknowledge the man insane and that he could not be hanged. Dr. Mercier, at that time, stood up and said it was another instance showing the necessity for an alteration of the law, and yet he is evidently now convinced that there is no such necessity.

Dr. DOUGLAS—The important question to be considered, Dr. Mercier says, is whether or not the law should be altered, and I put it rather in the form of a query than of giving an opinion on my own part, hoping that Dr. Maudsley or someone else will help us to come to a conclusion. Dr. Mercier said the law as passed by Act of Parliament is a bad law, it is not in conformity with medical science and medical opinion of to-day, but practically as administered it is a good law and injustice is not done. During Dr. Mercier's absence from the room, however, Dr. Clouston and others have shown conclusively, it seems to me, that the law has greatly miscarried in regard to justice and is not so good in its administration as Dr. Mercier would lead us to believe. Then, sir, law, like everything else, is subject to a process of evolution. It may be—and I will admit, at least for the sake of argument, that when this law was framed it was to a great extent in conformity with medical opinion and medical science. But, sir, it is no longer denied that it is no longer in conformity with the medical opinion and the medical science of to-day, that as the Act of Parliament stands it is unjust and causes injustice to be done. If, in the process of evolution, the judge-made law has come almost abreast in the hands of some judges, at least, of the medical opinion of to-day, surely the time may have arrived when we may bring the law according to Act of Parliament into conformity with that opinion; because such is the process, I take it, by which laws have been altered and brought into conformity with public opinion and with the latest advances of science.

Dr. RAYNER—The meeting, I think, is generally agreed that at least in fifty per cent. of the trials of insane persons for murder injustice is done (no, no, and hear, hear). At all events in a large proportion injustice is done in this way—that a man is condemned unjustly although he escapes hanging afterwards. That is the point of injustice I refer to, and I think the judge is responsible for that injustice. The question is how to amend that. We cannot eliminate the personal equation from our judges, and we cannot get rid of their prejudices—which, I think, are much more important, as has been sug-

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gested; but I think we can bring pressure to bear on them which would soon cause the amendment of their prejudices to some extent; for if in every case of this kind where a prisoner was unjustly condemned and afterwards let off the attention of the Home Secretary was drawn to it in Parliament, and the reasons inquired for, the judges would very soon take care that miscarriages of justice did not occur in that way in their courts, and would soon adopt the practice of calling in assessors.

Dr. MAUDSLEY in reply said—It is not necessary, sir, that I should do more than make a very few observations, attempt anything direct in the way of reply, for from the general trend of the discussion I gather that we are pretty well agreed. Practically all we wish is that in each particular case all the facts should be placed clearly and plainly before the court and it receive the best scientific assistance in dealing with them. We wish that these facts should be submitted without prejudice to the jury; and what I argue—and I gather that the great majority of those present here agree with me in arguing—is that while the "right and wrong" test is put before the jury, these facts are not clearly placed before them; that, in fact, they are prejudged—prejudged, as I said, exactly as if a particular test of poison were imposed on the jury in trying a case of poisoning. Then we are met with the statement that some of the judges give immense latitude, and we have had reports from newspapers in which individual judges have done that. Mr. Justice Hawkins has been mentioned as a severe judge who has given that kind of latitude. Now Mr. Justice Hawkins happens, I think, to be one of those judges who have expressed in strong terms their condemnation of the "right and wrong" theory. In that he ranks with the late Lord Justice Coleridge and with Lord Blackburn, so that we must not draw too large an inference from the particular feeling of Mr. Justice Hawkins. If all the judges agree with him we shall have nothing to say. But his opinion is nothing to the point so long as there are any judges who tie us and themselves down to this rigid and exclusive test. That is what we object to and wish to have done away with. When that is done away with there is really nothing to argue, but as long as there are judges who continue to use the old formula injustice will be done; for it is an injustice to go through the solemn parade of justice and sentence a man to death and then, after private inquiry, declare him irresponsible and send him to Broadmoor. What happens with regard to the judges in my experience is this, that when a judge has been on the bench for a considerable number of years he is converted and abandons the "right and wrong" theory, but when a new judge is appointed he puts it forth in its extremest terms. It is not till he has been on the bench for some time that his mind becomes enlarged and instructed by experience and he does what we wish them all to do—abandon the discredited test and place the facts before the jury.

The Insanity of Love, a Study of Ariosto. By H. KORNFELD, M.D., Corresponding Member of the Medico-Psychological Association.

"Set me as a seal upon thine heart, as a seal upon thine arm: for love is strong as death; jealousy is cruel as the grave: the coals thereof are coals of fire, which hath a most vehement flame. Many waters cannot quench love, neither can the floods drown it; if a man would give all the substance of his house for love, it would utterly be contemned."

Although it is true that the mind and the body are in intimate connection, and although every mental action is accompanied by some physical process, yet I have always held that the soul is not localized in the brain—that human soul with functions superadded to thinking and remember-

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