Drunkenness in Relation to Criminal Responsibility. By Geo. H. Savage, F.R.C.P.

Read at the Quarterly Meeting of the Medico-Psychological Association, held at Bethlem Hospital, Feb. 24, 1886.

Till recently we believed that, however much the members of the legal and medical professions might differ in regard to the definition of insanity, and to its relations to responsibility, they agreed in the main as to the question of drunkenness and its responsibilities.

It seemed a pretty good, and, at least, comprehensible and straightforward decision that acute drunkenness was no excuse for a criminal act, and, further, that if a man were unduly, that is morbidly, susceptible to drink, this morbid state was not to be accepted as an excuse for any crime.

On the other hand, though a man may not be responsible for acts performed during drunkenness, yet it was considered just that he should be excused if his act were performed while he was distinctly out of his mind in an attack of delirium tremens, or still more certainly if he committed the crime while suffering from some recognised form of insanity which might have been caused by drink.

There must be difficult cases in which it will be the duty of the judge to point out extenuating circumstances. Thus a man who has recently received an injury to his head may be ignorant of the fact that drink may affect him more powerfully than it did previously; or again, a man who may have recently recovered from the effects of illness or privation, or who may be in the earlier stages of some brain-disease, may be morbidly susceptible to the influence of drink, and may be excused if, under such circumstances, he committed a crime while drunk.

On the other hand, it seems hardly reasonable to condone drunkenness in a man who has already had several attacks of delirium tremens. Such a patient knows from past experience what danger he runs, and though his will-power may be weakened, yet it seems to me that in some cases, persons who have committed crimes while suffering from delirium tremens might fairly be punished.

It has, however, been ruled that a person suffering from delirium tremens may legally be placed under certificate, and if this were accepted as generally justifiable, the right to punish such persons must be denied.

https://doi.org/10.1192/bjp.32.137.23 Published online by Cambridge University Press

I should say that though some persons suffering from delirium tremens may be certified as insane, yet the most ought not to be so treated, and that similarly there may be shades of responsibility in such cases.

If delirium tremens be made to be an excuse for crimes of all kinds committed under all circumstances, it appears to me to be difficult to punish persons who are very drunk at the time the act is performed.

I have seen persons suffering from mental disorder varying in every degree from simple silliness to undoubted insanity as a result of acute drunkenness. There are cases in which, from congenital and other physical defect, a person may pass direct from acute drunkenness into moral perversion, without having any distinct delirium, and there are other cases in which delirium tremens has been followed in a few days by true insanity, which has lasted for weeks or months. The points above noticed are noteworthy at the present time, for not only are crimes of violence perpetrated during drunkenness very common, but the ruling of judges varies most widely, as will be seen by the cases given below.

The writer of this article had to be present for part of two days in January, 1886, at the Old Bailey, where Mr. Justice Denman presided, and during that time four cases were considered in which the plea of insanity was raised, and in three of these, two of which we shall consider, drink was the chief or immediate cause of the crime committed.

Mr. Justice Denman in each case most emphatically laid down the law as follows: that a crime committed during drunkenness was as much a crime as if it were committed during sobriety, and that the jury had nothing to do with the fact that the man was drunk. The prisoner was supposed to know the effect of drink, and if he took away his senses by means of drink it was no excuse at all. There was no hesitation about Mr. Justice Denman, and the general feeling was that his decision was just, but might in some cases be unduly severe. We shall refer to some of these cases in more detail later. Sir J. Stephen, in his "History of Criminal Law in England" (vol. ii., p. 165), says: "A man wildly excited by drink can hardly be said to know at the moment of that excitement that any particular act which he may do is either right or wrong. That which prevents him from knowing it is not mistake, but excitement. The reason why ordinary drunkenness is no excuse for crime is that the offender did wrong in getting drunk, but a person brought into this state by some

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kinds of fraud is said by Hale to be in the same position as a man suffering under any other frenzy. If so it would seem to follow that if madness produces an excitement like that of a drunken man, the person so excited may, during such excitement, be said to be prevented by disease affecting his mind from knowing that his act is wrong."

After such decisions it is very strange if the recent ruling at Lancaster by Mr. Justice Day can be accepted. In the case of Joseph Baines, charged with wilful murder of his wife, Ellen Baines, Mr. Justice Day is reported as saying, in reference to the ruling of Mr. Justice Manisty, in Reg. v. M'Gowan, "that a state of disease brought about by a person's own act—*e.g.*, delirium tremens, caused by excessive drinking—was no excuse for committing a crime unless the disease so produced was permanent," that he could not agree to this; that the question was whether there was insanity or not; that it was immaterial whether it was caused by the person himself or by the vices of his ancestors; that he could not follow the decision of Mr. Justice Manisty in Reg. v. M'Gowan; and that it was immaterial whether the insanity was permanent or temporary. His lordship added: "I have ruled that if a man were in such a state of intoxication that he did not know the nature of his act, or that his act was wrongful, his act would be excusable."

There seems to be no way out of this ruling, but yet we are inclined to think most judges will not follow the ruling of Mr. Justice Day.

The short report of the case will be found below, and the jury found the man guilty.

At Lancaster, on Friday, before Mr. Justice Day, Joseph Baines, fish-hawker, aged 41, was charged with the wilful murder of his wife, Ellen Baines, at Barrow, on December 25 last.—Mr. Cottingham and Mr. Cross conducted the prosecution on behalf of the Treasury, and Mr. Henry defended the prisoner.—Mr. Cottingham, in opening, stated that for some time previous to the committal of the crime the prisoner and his wife had lived unhappily together, owing to his drunken habits. About a year ago prisoner had been judicially separated from her; but at the time of the murder they were living together. Prisoner had been an abstainer for some time, but on Christmas Eve had been drinking heavily, and a violent quarrel ensuing, which continued all night, the prisoner never went to bed, but continued walking up and down stairs in a restless state. About eleven o'clock on Christmas morning

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deceased went to the house of John Evans, next door, to ascertain the time, when the prisoner came in. He made for his wife, who fell back into a chair, calling out "He has a knife." The prisoner stabbed her four times, the wounds being from four to five inches deep. Evans knocked the prisoner into the fireplace, and the knife fell from his hand. The deceased crawled out of the house on her hands and knees, and was carried to a sofa in her house, where she died in fifteen minutes. Evans said, "Is she dead?" and the prisoner remarked, "If she is not dead she ought to be." Before the prisoner was taken away he wished to kiss his wife, and said to her, "Whether you live or die, you know what has been the cause of this." On being charged at the lock-up prisoner said, "It is all over last night's affair; I saw it with my own eyes. I did it deliberately over that." The prisoner was under the delusion that his wife had been unfaithful to him.—The defence was that the prisoner was insane and not responsible for his actions when the murder was committed.—The evidence proved that the prisoner was in a wild, excited state at the time the crime was committed, that he beat himself with a stick, and ran his head against the wall. He had on several occasions been under treatment for delirium tremens; he had one attack a week previously, and another two days after committing the crime.—The jury retired to consider their verdict, and, after an absence of seven minutes, returned into Court with a verdict of guilty.—His Lordship sentenced the prisoner to death in the usual form, expressing his concurrence with the verdict.—The prisoner was apparently unmoved.—"Times," Monday, January 27, 1886.

I must say that the decision of Mr. Justice Day appears to me to be so logically correct that I accept it as a very good example of the wide difference which must exist between the legal mind and the medical mind. To the former everything must be regular, consistent, and definite, while to the scientific observer of natural and diseased processes everything is seen to be shifting and undefined.

It appears to the judge that if a man has no control over his actions he cannot be blamed for not exercising what he has not, and it is absurd to let one man off because by self-indulgence for years he has reduced himself to weak-mindedness, and punish another who has only taken a few steps on the downward road.

Again, the admission of the doctors that the sins of the fathers are visited on the children must free the sons from

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responsibility, and there can be no question of punishing an insane child, whose insanity has been produced by a vicious parent.

That drunkenness and insanity should be treated as if they were one and the same thing appears to me to cause the mistake.

And, having thus referred to several points of interest, I shall pass on to the cases which originally suggested this article.

The first was that of James Williams, tried at the Old Bailey, before Mr. Justice Denman and a jury, on January 13th, 1886.

James Williams, 18, labourer, was indicted for the wilful murder of Ellen Williams, his sister.—Mr. Poland and Mr. Montagu Williams conducted the prosecution for the Treasury; Mr. Geoghegan and Mr. Vincent were counsel for the defence. —The prisoner was living with his father, a net-maker, and the deceased, his sister, a girl 16 years of age, in St. George's-in-the-East. All three were stated to have occupied one room. The prisoner returned home at midnight on the 2nd of December the worse for drink. He told his father to go to bed, and he asked the deceased how she spelt the name of a woman to whom he owed some money. The prisoner, who was a volunteer, instead of going to bed, went out into the yard and returned shortly afterwards. Thereupon he took up his rifle, which was in the room, and, as alleged by his father, without putting it to his shoulder or taking aim, he discharged it at random. The bullet struck his sister, who was lying in bed, and caused her death. The prisoner's father struggled with him and took the rifle from him. The prisoner made various statements to the effect that he had intended to kill his father first, his sister next, and himself last. He said he had shot his sister, and that he had cause to do so, as she had received a letter he did not like. He had, he said, made up his mind to do it on the Monday, and had brought three rounds of ammunition from the butts, and he added that he hoped she was dead and he would swing for her. It seemed that a soldier named Maloney had become attached to the girl, that he had gone to Ireland with his regiment, and had written a love-letter to her. It was said that this was the letter the prisoner said he did not like. It was stated that the prisoner had always been an affectionate brother to the girl, and that lately some one he was much attached to had died, which had caused a noticeable change in his demeanour.—Witnesses for the defence were called to show that the prisoner had at one time attempted to commit suicide.

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—Dr. Bastian and Mr. Morgan, the medical officer of the House of Detention, were called on the part of the prosecution to show that the prisoner was of perfectly sound mind.—For the defence Dr. Savage, the medical superintendent of Bethlem Hospital, was examined for the purpose of supporting the defence of insanity which was raised. He said that although the prisoner might not be actually insane, yet that he was of low mental power, and would be easily affected by drink.—Mr. Geoghegan addressed the jury for the prisoner, and raised the two-fold defence that the accused was of such unsoundness of mind at the time of the act that he did not know the nature of the act, and consequently was not responsible for his actions, and that, in the absence of any evidence of premeditation, and considering that the prisoner was very much under the influence of drink, no weight could be attached to the statements made by him. If, however, the jury were not satisfied as to the allegation of insanity, they ought only to find a verdict of manslaughter.—Mr. Justice Denman having directed the jury on the law as regards insanity, the jury retired to consider their verdict, and after an absence of about an hour and a half, they returned into Court at twenty-five minutes past seven, finding the prisoner guilty of manslaughter only.—Sentence: Fifteen years' hard labour.

It may be well to state a few particulars as to this man Williams. He is 18 years old, and one of three surviving children out of a family of over twenty, most dying in infancy. His father was said to be intemperate; the prisoner had drunk steadily since he was 15; he took spirits as well as beer.

He was engaged to be married, but the girl died of small-pox eighteen months before the murder.

Since the death of this girl he had been more and more intemperate, and had attempted suicide on several occasions, but it was stated that all these attempts were made when he was drunk.

On examination I found the prisoner an under-grown youth, with a very small head. He was very quick and bright in his answers to questions, having the quickness of a city Arab. He seemed quite indifferent to the position he was in. He said he had no recollection of the criminal act, but there was reason to believe that he had some vague recollection of it, but denied this for a purpose.

There was, in my opinion, no active insanity, and no delusion as a cause for the act, but one had to deal with a young man of

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very unstable inheritance, small capacity, and of very prematurely vicious life, who, while unconscious from drink, perpetrated an act without cause or premeditation.

The drunkenness was a vice, but the physique and the general mental and moral weakness were beyond the prisoner's control. I could not say he was actively insane, but I believed him to be weak-minded, and that this weak-mindedness preceded his intemperance.

The punishment was, however, in my opinion, a just one on the whole, and might, under some conditions, be the best training for so defective a being. Fifteen years of education and training might do good.

In the next case the plea of insanity was raised and accepted by both judge and jury, the only point of special interest being that the prisoner was a young married woman, who had had delirium tremens, and whose mental disorder resembled, in many particulars, insanity due to alcohol.

I have no doubt the murder of the child was perpetrated while the mother was insane, and was the outcome of her hallucinations, but at the same time the mental disorder was almost certainly the result of intemperance.

The following is the report of the trial in the papers:—

Esther Base, 31, married, indicted for the wilful murder of Henry Base, aged nine months.

The prisoner was living with her husband, and had this one child, of which she was exceedingly fond. She had been noticed to be strange and suspicious for some time before the murder on December 6. She was under the impression some one wanted to take the child from her. A doctor, on December 4th, told the husband that his wife ought to be certified and taken care of. On December 6, about 8 p.m., when the prisoner, her husband, and his brother were in a room together, the woman got up excitedly and walked towards the window, which was shut, but the glass of which was out, and before any one could interfere to stop her, she threw the child out of the window. She then screamed out "I have done it."

She said several times that *they* wanted to take the child from her.

The child had fracture of the skull, and was past surgical aid. When taken into custody the mother said she was *driven* to do it, and she was glad she had done so, because the child had gone to the angels in Heaven. The prisoner had always been affectionate and had treated the child well, and the question was

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whether at the time she did the act she knew the nature and quality of it and that it was wrong. Medical evidence was given that the prisoner was of unsound mind, and did not understand the quality of the act. It was stated also that she had suffered from delirium tremens.

Mr. Justice Denman took no notice of the drink question, and only said that after the opinion of the medical men that the prisoner was of unsound mind, he did not think further evidence necessary, and ruled that the jury must be satisfied that the prisoner at the time the act was committed, from a defect of reason, did not know the nature and quality of the act, or that it was wrong. The jury found that she was insane, and the Court directed that she should be treated as a criminal lunatic.—"Times," Jan. 15, 1886.

And thus these three interesting cases end, and, to my thinking, there is a general inconsistency in the result. The first man was hanged, though he committed his crime as the result of delusions which probably were due to drink, and though the judge is reported to have said that acute drunkenness is in itself an excuse. The second man was sentenced to a term of imprisonment when he either ought to have been hanged or sent to an asylum. And the third case was sent to an asylum, no question being asked, presumably because before the crime was committed a medical man recognised insanity, and did not refer to drink as the cause.

The Psychological Bearings of the recent Matriculation Examination of the London University. By TRIBOLETES.

The questions set at the recent Matriculation Examination of the London University afford food for the student of mental science. The whole system of competitive examinations, as understood by our universities, is so much at variance with the true principles of mental development that it is somewhat difficult to judge the papers by the standard of the metaphysician. When the present system is tending to make of education an *art* rather than a *science*, when the test of a man's capabilities is rather to see how many pages of carefully prepared "Guides to University Students" he can assimilate rather than how much he has had called into play his powers of

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