MEMORANDUM ON CRIMINAL RESPONSIBILITY.*

By W. Orange, C.B., M.D., F.R.C.P.

In the case of a person who is charged with an indictable offence, and who is alleged to be insane, the first question that presents itself for consideration is whether such accused person is, or is not, in a fit mental condition to be called upon to plead to the indictment, and to take his trial; for, according to the common law of England, as stated by Blackstone, in his Commentaries (Book 4, Chap. II): "If a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought." And this general principle of the common law was set out more fully in a statute passed in the year 1800 (39 and 40 Geo. III., cap. 94), by which it was enacted that "If any person indicted for any offence shall be insane, and shall, upon arraignment, be found so to be by a jury lawfully impanelled for that purpose, so that such person cannot be tried upon such indictment," . . . "it shall be lawful for the Court before whom any such person shall be brought to be arraigned, or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until His Majesty's pleasure shall be known."

In deciding this point, whether the accused is mentally fit to be called upon to plead and to take his trial, the Courts do not appear to be in any way fettered or hampered by any rigid rule.

In Russell, *On Crimes* (Vol. i., p. 114), the test of capacity to plead to an indictment is stated in these terms:—"Whether he (the accused) is of sufficient intellect to comprehend the course of the proceedings on the trial, so as to be able to make a proper defence." If he is not mentally fit to make a proper defence, the trial does not proceed, but the accused is detained, in conformity with the statutory provisions.†

In those cases, however, where the question referred to in the preceding paragraph has been decided in the affirmative, and where it is considered that the accused is, to use the words of Russell, "of sufficient intellect to comprehend the course of the proceedings on the trial, so as to be able to make a proper defence," the accused is then called upon to plead. The trial then proceeds, and the jury are required to find, firstly, whether the accused did or did not commit the offence charged against him; and, if this question is answered in the affirmative, then to say, further, whether, at the very time of committing the offence the accused was, or was not, "insane, so as not to be responsible according to law."

The special statute relating to this matter, at present in force, was passed in the year 1883, and is entitled the "Trial of Lunatics Act" (46 and 47 Vict., c. 38). It extends to Ireland, but not to Scotland; and it will be observed that its provisions have reference only to those cases in which the accused is considered to be of sufficient mental capacity and of sufficiently sound mind to be put upon his trial.

By this statute it is enacted that "where in any indictment, or information, any act, or omission, is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done, or the omission made, then, if it appears to the jury, before whom such person is tried, that he did the act, or made the omission charged, but was insane, as aforesaid, at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane, as aforesaid, when he did the act or made the omission."

The statute then goes on to direct that "where such special verdict is found,

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† See also Tuke's *Dictionary of Psychological Medicine*, p. 591, Art. "Plead."

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the Court shall order the accused to be kept in custody *as a criminal lunatic*, in such place and in such manner as the Court shall direct, till Her Majesty's pleasure shall be known."

It will be observed that, whereas by former statutes a person was said to be "*acquitted* on the ground of insanity," the term "*acquitted*" is now no longer used; but by the statute of 1883, the jury are required to say, firstly, whether the accused is or is not guilty of the offence charged against him; and then, if they say he is guilty, they are further required to say whether he was sane or insane at the time of its commission.

It will, further, be observed that in those cases where a person is declared by the jury to have been guilty of the offence charged against him, but to have been insane at the time of its commission, the Court is specially required to order such person to be kept in custody as a *criminal lunatic*; and he is thus brought under the operation of special statutes, which have been framed with the double object of providing for the due care and treatment of the individual, and also of affording to the public the protection, which they have the right to require, against the possible commission of hurtful acts by the same individual, in the future.

And now we come to the main question, namely, the precise interpretation that is to be placed upon the words of the statute, "insane, so as not to be responsible, according to the law, for his actions, at the time when the act was done, or the omission made."

Lord Denman, in the course of his charge to the jury, in Oxford's case, laid down the broad, general principle that "Every sort of insanity and every mode of proving it must have reference to the particular object with which it is laid before the Court."

And in the case now under consideration the particular object is to determine whether the insanity is of such kind and of such degree as to render the accused person who is the subject of it "not responsible, according to the law, for his actions."

It is with reference to the determination of this particular point that it becomes necessary to consider the answers that were returned by the bench of judges, in the year 1843, to certain questions put to them by the House of Lords; inasmuch as it is generally held that those answers constitute the leading authority by which the Courts are guided in directing juries in cases of this description.

The resolution, which the Committee was appointed to consider, would appear to indicate, indeed, that the terms of those answers were regarded as being the matter to which the attention of the Committee would be chiefly directed, although the words "to investigate the whole subject" would show that its attention was not to be entirely confined to that one point.

The circumstances under which the questions were put to the House of Lords are so well known as to require only the very briefest recapitulation.

An insane man, named Daniel McNaghten, who laboured under insane delusions of the kind commonly known as delusions of persecution, and who insanely imagined that his supposed enemies were gradually killing him by their persecutions, conceived, at last, the insane idea that the Prime Minister was responsible for the continuance of these supposed persecutions, and that the only way in which he could put a stop to them would be by taking his life. Actuated by these monstrous delusions, he, in the end, fired at, and killed the Prime Minister's Private Secretary, whom he mistook for the Prime Minister himself.

In due course he was tried, with the result that the jury found, as their verdict, that he was insane at the time of committing his offence.

So tragic an event produced, naturally enough, a profound sensation, and it is scarcely to be wondered at that some difference of opinion was expressed with respect to the verdict.

In the discussions which ensued in the House of Lords*, it would appear that three of the Law Lords, viz. Lord Lyndhurst, Lord Cottenham, and Lord Campbell, were of opinion that the verdict was a right one; whilst Lord Brougham

* *Hansard*, 3rd series, vol. lxvii., pp. 714-741.

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stoutly maintained the contrary, and said: "If the perpetrator knew what he was doing, if he had taken his precautions to accomplish his purpose, if he knew at the time of doing the desperate act that it was forbidden by the law, that was his test of sanity;" and then his Lordship went on to add that "he cared not what judge gave another test, he should go to his grave in the belief that it was the real, sound, and consistent test."

Notwithstanding, however, that Lord Brougham thus forcibly expressed his disregard for the opinions of other judges, he yet urged, and urged so strongly as to overcome the wiser counsels of Lord Lyndhurst, that certain questions should be put by the House of Lords to the whole bench of judges, in order that they, in their answers, might formulate the criteria of criminal responsibility, in cases of alleged unsoundness of mind.

As a result of the discussion which took place in the House of Lords, on March 6th and 13th, 1843, five questions were put to the judges, by whom, after taking ample time for deliberation, answers were returned on June 19th of that year.

The terms of those questions, and of the answers thereto, will be found in the pages of *Clark and Finnelly's Reports*, Vol. x., p. 200; or at page 201 of *The Insane and the Law*, by Pitt-Lewis, Percy Smith, and Hawke; or at page 310 of Hack Tuke's *Dictionary of Psychological Medicine*.

It will be observed that the judges themselves had no desire whatever that such questions should be put to them. They did not, of their own accord, go out of their way to make rules. Much against their inclination, they did their best to answer abstract questions which, probably, ought never to have been put to them.

The terms of these answers have, indeed, been subjected to much criticism from various quarters.

The late Sir James Fitzjames Stephen, in his *History of the Criminal Law of England*, observes (Vol. ii., p. 154): "I cannot help feeling, however, and I know that some of the most distinguished judges on the bench have been of the same opinion, that the authority of the answers is questionable, and it appears to me that when carefully considered they leave untouched the most difficult question connected with the subject, and lay down propositions liable to be misunderstood, *though they might*, and *I think ought*, to be construed in a way *which would dispose satisfactorily of all cases whatever*."

And in another passage the same writer refers to them as "mere answers to questions which the judges were probably under no obligation to answer, and to which the House of Lords had probably no right to require an answer, as they did not arise out of any matter judicially before the House."

It will be remembered also that Mr. Justice Maule declined to concur in the answers given by the other judges, and said that he would have been glad if his brethren had joined him in praying to be excused from answering these questions, as he feared that the answers "might embarrass the administration of justice when they were cited in criminal trials."

And, if we descend from the bench to the bar, we find the late Mr. Serjeant Ballantyne writing as follows in the volumes of recollections published by him in 1882:* "The judges were summoned by their lordships to express their opinion upon the law applicable to insanity in criminal cases. It seems to me surprising that they did not point out that such a proceeding was extra-judicial, and that their opinions could only properly be given upon certain facts arising before them in their judicial capacity, and that what was asked of them was to make a law in anticipation of facts that might hereafter arise. . . . As might be expected, being called upon to found abstract opinions, with no facts to go upon, they have not greatly assisted the administration of justice."

If we turn now from the question of the authority of the answers to the question of their scope, we shall find that great legal authorities are not all of one mind either upon this subject. And, thus, whilst the late Lord Chief Justice Cockburn (in a letter on the Criminal Code Bill, ordered by the House of Commons to be printed on the 6th of June, 1879) refers to the answers as if they contained only so much

* *Some Experiences of a Barrister's Life*, by Mr. Serjeant Ballantyne. 1882; Bentley. Vol. i., p. 246.

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of the law as was necessary to answer the questions that had been submitted to the judges, on the other hand Lord Wensleydale, who, as Mr. Baron Parke, had taken part in the preparation of the answers, spoke of them, in the evidence given by him before the Capital Punishment Commission of 1865 (Question 362), as if he regarded them as embodying the whole of the law on the subject.

If it were thought that any further justification were needed by the Medico-Psychological Association for raising the question now under consideration, such justification would be found in the recent utterances of two judges so eminent as Mr. Justice Hawkins and the late Lord Chief Justice Coleridge. In the course of the trial, for murder, of a man named George Pearsall, reported in the *Worcester Journal* for Saturday, February 18th, 1888, Lord Coleridge is reported to have said that "he considered that judicial decisions on questions of insanity were bound by an old authority which, by the light of modern science, was altogether unsound and wrong." And, further on, that "there was no more painful part of the duty of those who had to administer the law than the matter of insanity. The law which existed upon the subject, and which he was going to lay down to them as law, was not incapable of being so interpreted as to do terrible injustice." And then, further on, Lord Coleridge said "that the law was administered now, he was most thankful to acknowledge, in a different spirit."

The result of the trial in this case was that the jury found, as their verdict, that the accused "was guilty of the act, but that he was insane at the time he did it."

In the case of Anthony Ware, reported in the *Shrewsbury Herald* for January, 24th, 1885, Mr. Justice Hawkins, in his charge to the Grand Jury, called attention to the case of this man, charged with murder at Bicton Asylum, and said "there had been a great deal of discussion as to how far Ware was responsible for his actions, being a confirmed lunatic." And, further on, that "it would, of course, be absurd to suppose that in this matter Ware was himself responsible for his actions, yet the law with respect to the responsibility of criminal lunatics seemed to him to be in a very unsatisfactory state;" and, further on, that "more than one of the judges had expressed a desire that the law on the subject should be reviewed, and a little more definite understanding arrived at."

His Lordship, however, at the conclusion of his remarks, added that "the Clerk of Arraigns had just handed him a letter from the Public Prosecutor, in which it was stated that no indictment would be preferred against him (Ware), as he had already been removed to Broadmoor Lunatic Asylum."

In looking through the records of the various discussions and criticisms to which the terms of the judges' answers have, at different times, been submitted, the attention is especially arrested by the discussion which took place in the year 1874, when a proposal was made to codify the law of homicide generally, and when, therefore, the codification of the law as to the effect of madness, in cases of homicide, was proposed, as a part of the general scheme.

A Bill, "to consolidate and amend the law relating to Homicide," was prepared, and brought into the House of Commons by Mr. Russell Gurney* and Mr. Lopes,† and was ordered to be printed on March 24th, 1874. The drafting of the Bill had been entrusted to Mr. Fitzjames Stephen.‡

The 24th section of this Bill, as brought into the House of Commons, was in the following terms:—

"Homicide is not criminal if the person by whom it is committed is, at the time when he commits it, prevented by any disease affecting his mind—

"*a.* From knowing the nature of the act done by him;

"*b.* From knowing that it is forbidden by law;

"*c.* From knowing that it is morally wrong; or,

"*d.* From controlling his own conduct.

"But homicide is criminal, although the mind of the person committing it is affected by disease, if such disease does not, in fact, produce some one of the effects aforesaid in reference to the act by which death is caused, or if the inability to control his conduct is not produced exclusively by such disease.

* At that time Recorder of London. † Now Lord Justice Lopes.

‡ Afterwards Sir James Fitzjames Stephen.

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"If a person is proved to have been labouring under any insane delusion at the time when he committed homicide, it shall be presumed, unless the contrary appears or is proved, that he did not possess the degree of knowledge or self-control hereinbefore specified."

This Bill, it will be remembered, was a Bill to define, consolidate, and amend the law relating to homicide generally. It consisted of 44 clauses, and the only clause touching upon the effect of madness was the 24th, which has been set out above.

The Bill was read a second time in the House of Commons on the 14th of May, and was then referred to a Select Committee, and the Report made by that Committee was ordered by the House of Commons to be printed on the 21st of July, 1874. In their Report the Committee observe that the responsibility of declaring the terms on which *it shall be lawful to take the life of a fellow creature* is the most awful that can be undertaken; and that it should not be adventured on as a test or experiment, but should be reserved until the method of codification has been perfected by numerous trials on less momentous subjects. They go on to say that "in the case of homicide we have to deal, not with technical terms, but with ordinary language, which is quite intelligible when used by a judge in directing a jury on a state of facts proved before them, but which, when reduced to abstract propositions, becomes obscure and ambiguous from the want of particulars to which the proposition applies, and from the want of a clear definition of the terms used."

After adducing other weighty reasons "against commencing to codify with the law of homicide, and above all against delegating such a duty to a Select Committee of the House of Commons," they reported that, in their opinion, it was not desirable to proceed with the Bill, and it was thereupon abandoned.

The Report made by the Select Committee was accompanied by the evidence taken thereon, which included the evidence of Mr. J. Fitzjames Stephen, by whom the Bill had been drawn, of Mr. Baron Bramwell* and of Mr. Justice Blackburn.† The Committee also appended a written memorandum, containing an elaborate criticism of the Bill, from the Lord Chief Justice (Sir Alexander Cockburn).

The first witness examined was Sir James Fitzjames Stephen. And with reference to the proposed 24th section of the Bill, which dealt with the question of insanity, he said,‡ "With regard to the law upon that subject (Section 24) the standard authority, as the Committee, of course, are well aware, is the opinion of the judges, given in McNaghten's case, although, of course, the Committee are also aware that very eminent judges have greatly doubted the constitutional propriety of putting abstract questions of that kind to the judges and getting such answers from them.

"I have heard more than one of the most eminent judges on the bench express themselves as being doubtful with regard to that authority on that ground. However, as a matter of fact, I think it will not be doubted that, at the present day, it is generally regarded as the leading authority on the subject of insanity. Now, as to that authority, I think this section varies from it slightly, but it varies from it by clearing up what I have always regarded as an ambiguity in the judgment as to a matter upon which the judges may possibly not have felt themselves called upon to give any opinion."

Sir James Stephen then went on to argue that the language of the judges, "that he (the accused party) did not know he was doing what was wrong," was intended to include "morally wrong" as well as "forbidden by law." Sir James then gave a case in illustration of his view, and went on to say, "Now, if you interpret the word 'wrong' as meaning not morally wrong but forbidden by law, that man" (the man whose case Sir James had described) "ought to have been hanged, because he not only knew that the act was forbidden by the law, but the very reason why he did it was because it was forbidden by law. I can

* Afterwards Lord Bramwell. † Afterwards Lord Blackburn.

‡ Report, page 8.

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hardly argue with anybody who says that a man" (such as the man whom Sir James had described) "ought to be hanged."

The next witness who was examined by the Committee was Lord Bramwell.

He objected both to Subsection "C" and to Subsection "D" of the proposed 24th clause, and the whole drift of his evidence was opposed to the idea of doing anything in the direction of diminishing the controlling influence which the fear of punishment might have in deterring what he termed "crazy fellows" from committing unlawful acts. He said,* "What you want to do is to frighten people, to terrify them; and the way to try who ought to be punished, to my mind, is to try who ought to be threatened with punishment."

Lord Bramwell referred to the case mentioned by Sir James Stephen, and said: "It is the case of a man who supposed that if he could be put to death he would save the world; and then he murders someone to get hanged in order to save the world. Mr. Stephen says: 'Would Baron Bramwell say that he ought to be hung?' I beg to say that is not the question. The question is, what rule you are to lay down; are you to lay down a rule that would exclude his being hung?" . . . "I would not have a law to except this case which would necessarily except others that ought not to be excepted."

Lord Bramwell also objected to Subsection "D" "from controlling his own conduct." He thought that at least this should be qualified by saying "from controlling his own conduct by the ordinary motives of mankind." He had sent to the Home Office this note,† "I vehemently protest against 'D.' What is the meaning of a man being prevented from controlling his conduct? When he is prevented it is because the preventing motives are strong enough. When he is not prevented it is because they are not strong enough. The effect of this would be to lessen the preventing motives."

Further on, Lord Bramwell said, "It is obvious that what is called an uncontrollable impulse is one as to which the deterring or controlling motives are not strong enough; and this is a proposition, in all cases, to take away from a man, in a state of mind in which he is more likely to do mischief than anything else, a deterring motive."

Being asked (Question 186) what he would say to a proposal that the clause should simply say that homicide should not be criminal where, according to the present law, it is not criminal, Lord Bramwell replied, "I think that would be a very great improvement on this Bill, for I think that, although the present law lays down such a definition of madness that *nobody is hardly ever really mad enough to be within* it, yet it is a *logical* and *good* definition."

Being asked (Question 187) whether Subsections "C" and "D," in his opinion, do not express the state of the law as it now is, Lord Bramwell replied, "I am certain they do not." And then, being asked whether he could state what would express it, he replied (Question 188) "When a man's state of mind is such that he does not know the nature and quality of the act he is doing, for instance, does not know that cutting a man's head off will kill him, like the man who cut off the head of another person in order to see how he looked when he woke; or when his state of mind is such that, although he may know what the result will be, he does not know that it is wrong, then he ought to be acquitted. So also, if he is labouring under a delusion of such a character that, if the delusion were true, he would be justified in the homicidal act, that is to say if he supposes that the man he kills is attacking him, and that it is necessary to defend his life; in all those cases he would be entitled to be acquitted on the ground of insanity. The common notion that a man may be acquitted merely because he is mad is erroneous."

Considerations of space forbid giving the whole of Lord Bramwell's evidence, but one other point must be mentioned. Lord Bramwell objected to the words "Homicide is not criminal" in the 24th Section, unless some words were introduced so as to ensure that persons who might be found insane under its provisions should be detained during her Majesty's pleasure.

* Report, page 26.

† Report of Homicide Law Amendment Committee, Question 183.

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The next witness was Lord Blackburn.

After submitting his observations on the earlier part of the Bill, his lordship went on to say (Question 274), "The next thing that comes here is that homicide is not criminal in cases of insanity. To that I can only say that on the question what amounts to insanity that would prevent a person being punishable or not, I have read every definition which I ever could meet with, and never was satisfied with one of them, and have endeavoured in vain to make one satisfactory to myself. I verily believe that it is not in human power to do it. You must take it that in every individual case you must look at the circumstances and do the best you can to say whether it was the disease of the mind which was the cause of the crime or the party's criminal will. But this I am clear about: Whatever definition you give of insanity it should apply to all crimes."

Being then asked (Question 276) whether he had any criticisms to offer on the 24th clause as it stood in the Bill, Lord Blackburn replied, "With regard to the words 'from knowing that it is morally wrong, or from controlling his own conduct;' these are the definitions that are put in, and these agree pretty nearly with what was said in McNaghten's case, in their extra-judicial opinions, by the judges, in the House of Lords; but we cannot fail to see that there are cases where the person is clearly not responsible, and yet knew right from wrong. I can give you an instance. It was in the case of that woman of whom I was speaking, who was tried for wounding a girl with intent to murder. The facts were these. The woman had more than once been insane, the insanity being principally brought on by suckling her child too long; that was the cause that had produced it before. She was living with her husband, and had the charge of this girl, an impotent girl of about fifteen, who lay in bed all day; she was very kind to her, and treated her very well; they were miserably poor, and very much owing to that she continued to nurse her boy till he was nearly two years old; and suddenly, when in this state, she one morning about eleven o'clock went to the child lying there in bed, aged 15, and deliberately cut her throat; then she went towards her own child, a girl of five or six years of age, of whom she was exceedingly fond, and the girl, hearing a noise, looked up and said: 'What are you doing?' 'I have killed Olivia, and I am going to kill you,' was the answer. The child fortunately, instead of screaming, threw her arms round her mother's neck, and said: 'No; I know you would not hurt your little Mopsy.' The woman dropped the child, went down and told a neighbour what she had done, that she had killed Olivia, and was going to kill Mary, 'but when the darling threw its arms round my neck I had not the heart to do it.' She clearly knew right from wrong, and knew the character of her act; for some little time after that she talked rationally enough, but before night she was sent to a lunatic asylum raving mad; and, having recovered, she was brought to be tried before me at a subsequent assizes. On the definition in McNaghten's case she did know right from wrong. She did not * know the quality of her act, and was quite aware of what she had done; but I felt it impossible to say she should be punished. If I had read the definition in McNaghten's case, and said, 'Do you bring her within that?' the jury would have taken the bit in their own teeth, and said, 'Not guilty on the ground of insanity.' I did not do that. I told them that there were exceptional cases, and on that the jury found her not guilty on the ground of insanity, and, I think, rightly."

Lord Blackburn then added, "On this definition" (that is to say on the definition of the proposed 24th section) "I think you would be obliged to say that woman was guilty."

It is most important not to overlook this point. Lord Blackburn, it will be seen, distinctly expresses the opinion not only that the case which he related did not come within the terms of the answers of the judges of 1843, but also that, in his view, the proposed 24th section of the Bill of 1874 would have equally failed to cover it.

Mr. Russell Gurney then said (Question 277), "There were delusions, were

* In the sentence "She did *not* know the quality of her act," the word *not* in the printed report (page 41) would appear to be an error.

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there not?" to which Lord Blackburn replied, "No. There was the subsequent evidence that before night she was so mad that they had to send her to an asylum; but before the crime, and for some time afterwards, there was nothing whatever to show a delusion. But I fear a general rule of this sort, making it a question for the jury whether the disease was the efficient cause of the act, would be leaving the thing at large. I have never been able to assign a definition satisfactory to my own mind, and will not pretend to do so."

With reference to this very striking case, so graphically related by Lord Blackburn, I have on a former occasion offered a few observations, some of which I venture to reproduce here.

The word "suddenly," which Lord Blackburn uses to express the manner in which the poor woman killed her child, is liable to be misleading. The woman became an inmate of Broadmoor, and told me all about the matter. She said that she was very much depressed and weakened by suckling her infant, and that the catamenia had returned, and she had suffered a great deal from hæmorrhage, and, on the previous day, Sunday, she knew she was "getting bad again"—to use her own phrase. Two years before she committed this murder, she had attempted to drown herself and her child, but was rescued. She says she could not accurately describe what she felt, but she remembers that she did not want to live, and she felt it to be a right thing to kill the children before she killed herself. She says also, and this is the point to which I wish to call attention, that she lay awake the whole of the Sunday night harbouring and pondering over her intention. She says that when her husband got up in the morning he said, "How are you?" She said, "Better," in order to induce him to go to his work and leave her; and then, after her husband had gone, she committed the murder. This is the history of all the cases of this kind of which I have been able to ascertain the real facts. The acts, in the absence of delirium, or sudden provocation, are commonly premeditated, and are the result of delusion, or, what comes to be the same thing, of an insane train of thought; and these cases must, therefore, be ranked in the same category as the case of Hadfield. The poor woman, whose case is so graphically related by Lord Blackburn, was unquestionably insane, and unable to rightly estimate the moral character of her act; but we must not overlook the lesson to be learned from the fact that the act was premeditated, and that the mode in which it was to be accomplished was carefully thought out. If it were urged, in the case of this poor woman, that although she knew that she was committing a wrongful act, yet that she was unable to control her conduct, the question might well arise as to what precisely is to be understood by these words, seeing that she controlled herself during the whole of the night, and that she continued to control herself when she told her husband in the morning that she was better.

After Lord Bramwell and Lord Blackburn had given their evidence, Sir James Fitzjames Stephen was recalled; and, in the course of his re-examination, he said (Question 313), "I need not say anything of Baron Bramwell's evidence on the subject of the *principle* of the Bill, because Baron Bramwell approves. Mr. Justice Blackburn disapproves of it, upon the ground, which is very familiar to all persons who have taken much interest in discussions about codifying the law, that an uncodified state of the law is better than a codified state of the law, inasmuch as the law possesses a quality which he describes as elasticity, and which he regards as a good thing, but which I and some others should describe as uncertainty and vagueness, and regard as a bad thing."

Sir James Stephen then referred to a case, not connected with the subject of insanity, which had been discussed by him in his original examination and which had been afterwards discussed by Lord Bramwell and Lord Blackburn, and went on to say: "If I may be permitted to say so without impertinence, I suppose it would be impossible to find two higher authorities upon such a point than Baron Bramwell and Mr. Justice Blackburn, and they flatly contradict one another."

Sir James Stephen then went on to say, "Take another point. Baron Bramwell thinks that the law of England is such that insanity hardly ever, under any circumstances, excuses a man from crime; in fact, in one of his answers he goes so

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far as to say that he holds the definition of insanity to be logical and correct, but does not believe that anybody ever was mad enough to fall within it. Practically, that comes to the same thing as saying that madness makes no difference as to responsibility. Mr. Justice Blackburn says, on the other hand, that the section drawn in the Bill pretty nearly represents the existing law as it is, and, if it errs, it errs in defect, because it does not take in certain cases which ought to be taken in. He adds that, in a particular case which he had to try, thinking that the existing law was, I suppose, in a very elastic condition, he took upon himself to tell the jury that there were exceptional cases which came under no rule, and that they ought to acquit the woman who was on her trial on the ground of insanity, although no authority could be found for it and although Baron Bramwell, an equal authority, considers that the woman under such circumstances ought not to be acquitted, as it was perfectly certain she was by law guilty. I do not wish to follow the matter out, because I do not wish to be considered as saying a word implying disrespect to either of those learned judges. But when you find two learned judges of the highest eminence directly contradicting each other on matters of the first importance, matters on which the life and death of persons tried before them might depend, and one of them praising that state of things as a proof of the elasticity of the common law, I can only say that I feel surprised, and cannot agree with that learned judge's praise of its elasticity. Baron Bramwell speaks quite in the opposite sense, and expresses entirely my own opinions on the matter, namely, that it is eminently desirable that you should have definitions, and that those definitions should state plainly what the law is."

The Lord Chief Justice, Sir Alexander Cockburn, was not examined by the Committee, but he submitted a written memorandum,* in the course of which he said that, although a strong supporter of codification, he objected to the Bill as being a partial and incomplete attempt at codification.

The Lord Chief Justice went on, however, to discuss the general provisions of the Bill, and, with respect to the 24th clause, made the following commeut:—

"As the law, as expounded by the judges in the House of Lords, now stands, it is only when mental disease produces incapacity to distinguish between right and wrong that immunity from the penal consequences of crime is admitted. The present Bill introduces a new element, the absence of the power of self-control. I concur most cordially in the proposed alteration of the law, having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse; the power of self-control when destroyed or suspended by mental disease becomes, I think, an essential element of responsibility."

In the course of his letter the Lord Chief Justice made also these further observations:—

"But there is one general provision on this subject to which I must strenuously object; it is that 'if a person is proved to have been labouring under any insane delusion at the time when he committed homicide, it shall be presumed, unless the contrary appears or is proved, that he did not possess the degree of knowledge or self-control hereinbefore specified.'

"The pathology of insanity shows that the mind may be subject to delusions which do not in any degree affect the moral sense, or the will, as regards the power of self-control. The mere existence of mental delusion ought not to affect the decision as to the power of self-control unless the nature of the delusion be such as legitimately would lead to the inference that the power of self-control was wanting. The question is one which should be decided by all the circumstances, independently of any presumption one way or the other."†

A fairly good idea may be gathered from the foregoing extracts of the difficulties that lie in the way of attempting to frame a definition of the kind and degree of insanity that should, in all cases, render a person not liable to punishment by the

* Report, page 63. † Report, page 66.

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ordinary criminal law—a definition, that is to say, that would include all cases which ought to be included, and at the same time that would not include others which ought to be excluded.

The differences of opinion between Lord Bramwell and Lord Blackburn are pointed out with sufficient emphasis by Sir James Fitzjames Stephen, but it will be observed that Sir Alexander Cockburn differed in some respects from both.

Lord Blackburn thought that "C" and "D" agreed "pretty nearly" with the answers of the judges of 1843, and that they did not go far enough to include some cases which ought to be included, whilst, on the other hand, Lord Bramwell objected strongly to both "C" and "D," and was quite certain that they did not express the state of the existing law. Sir James Stephen, who was in favour of the adoption of both "C" and "D," spoke of them as varying "slightly" from the answers of the judges, but as differing only by clearing up an ambiguity; whilst Sir Alexander Cockburn spoke of "D" as introducing a new element, and went on to say that he concurred "most cordially" in the proposed alteration. But he objected strenuously to the paragraph with reference to the effect of delusions.

It must not be forgotten either that, quite apart from any particular formula, differences of opinion, more or less pronounced, are by no means unknown, not only in criminal cases, but also in civil cases, in which questions relating to insanity are involved. Abundant illustration of this may be found in cases in which the question to be determined was whether the persons who were the subjects of the inquiries were or were not capable of managing themselves or their affairs, or in cases in which the question was whether certain persons who had been received for treatment in an unlicensed house were or were not insane. And then, too, with respect to criminal cases, not only do we find that honest differences of opinion arise over individual cases, but it may be observed that in the past absolute unanimity of opinion has not prevailed, even with regard to general principles; so that whilst, on the one hand, we find that great legal authorities such as Coke and Hale and Blackstone speak of the execution of a madman as being "a miserable spectacle, both against law, and of extreme inhumanity and cruelty," we find, on the other hand, a small minority not indisposed to agree with Smollett, who, it may be remembered, was a member of the medical profession, and who yet, in the remarks which, in his *History of England*, he makes upon the case of Earl Ferrers, expresses the opinion that "Perhaps it might be no absurd or unreasonable regulation in the Legislature to divest lunatics of the privilege of insanity, and, in cases of enormity, subject them to the common penalties of the law."—(*History of England*, by T. Smollett, M.D., 1805, Vol. v., page 208.)

As bearing upon the opinions expressed by Smollett, it is interesting to note the remarks recently made by the late Lord Chief Justice, Lord Coleridge, who, at the trial of a man named Oats at the Bodmin Assizes in February, 1891, is reported by the *Western Morning News* for February 28th of that year to have observed in his address to the Grand Jury that "It was said by a legal authority when he was a young man that if a person was found guilty of murder he should be hung, whether he was sane or not, for if he was sane he deserved it, and if he was mad it was to him no harm. That seemed to him to be a horrible doctrine, and he was glad to find it was no longer held."

Looking broadly at the matter, however, the point which is, of all others, the most important is as to the manner in which the terms of the answers that were given by the judges in the year 1843 are now, in actual practice, construed by their successors at the present day.

We have seen how the late Mr. Justice Fitzjames Stephen held that the answers were capable of being so construed as to dispose satisfactorily of all cases whatever. But we have also seen, on the other hand, how the late Lord Bramwell considered "That although the present law lays down such a definition of madness that nobody is hardly ever really mad enough to be within it, yet it is a logical and good definition." And that this was not a hastily-formed opinion on the part of Lord Bramwell is shown by the evidence given by his lordship, in 1865, before the Capital Punishment Commission, and also by an article contributed

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by him, in 1885, to the December number of the *Nineteenth Century*, in which, it may be observed, he speaks of the law as a "right law—right to demonstration."

It will be remembered too that Sir James Fitzjames Stephen, in his *History of the Criminal Law*, expresses himself as follows:—

"What, then, is the meaning of a maniac 'labouring under such a defect of reason that he does not know that he is doing what is wrong?' It may be said that this description would apply only to a person in whom madness took the form of ignorance of the opinions of mankind in general as to the wickedness of particular crimes—murder, for instance—and such a state of mind would, I suppose, be so rare as to be practically unknown. This seems to me to be a narrow view of the subject, not supported by the language of the judges. I think that anyone would fall within the description in question who was deprived by disease affecting the mind of the power of passing a rational judgment on the moral character of the act which he meant to do. Suppose, for instance, that by reason of disease of the brain a man's mind is filled with delusions which, if true, would not justify or excuse his proposed act, but which in themselves are so wild and astonishing as to make it impossible for him to reason about them calmly, or to reason calmly on matters connected with them. Suppose, too, that the succession of insane thoughts of one kind and another is so rapid as to confuse him, and finally, suppose that his will is weakened by his disease, that he is unequal to the effort of calm sustained thought upon any subject, and especially upon subjects connected with his delusion, can he be said to know, or have a capacity of knowing, that the act which he proposes to do is wrong? I should say he could not."*

Certainly, in recent years, the manner in which juries have been directed by judges goes very far towards confirming the view of Mr. Justice Stephen, as will appear from an examination of reported cases, some of which we may now proceed to notice.

Mr. Justice Stephen, in the course of his charge to the jury at the trial, for murder, of a man named David Davies, at the Glamorganshire Spring Assizes in 1888, is reported to have expressed himself as follows (*vide* the *Western Mail*, March 15th, 1888): "It is said that, according to the law, a man is responsible for his acts when he knows that the act is wrong, and that is true. Now medical men frequently say that many persons who are really mad do know that the act is wrong. Now, if you will exercise your judgment in the matter, you will probably see that knowing the act is wrong means nothing more nor less than the power of thinking about it the same as a sane man would think about it."

Again, in the case of Richard Coolidge Duncan, tried at the Carnarvon Assizes in July, 1891, before Mr. Justice Lawrance, on the charge of wounding his wife with the intent to kill her, the learned Judge in his charge said:—

"The jury should consider three questions in estimating the prisoner's sanity:

"I. Did he know what were the physical consequences of his act?

"II. Did he know that it was wrong?

"III. If he knew that the act was wrong, had he sufficient strength of will to abstain from doing it?"

The jury found the accused insane.—Reported in *North Wales Chronicle*, July 18th, 1891, and *Carnarvon and Denbigh Herald*, July 17th, 1891.

Again, at the trial of a man named William Burt, at the Norwich Assizes, on the 9th of November, 1885, on a charge of feloniously causing grievous bodily harm, the report given in a local paper, the *Norfolk Chronicle*, states that Mr. Justice Stephen, having explained the state of the law as to what constituted irresponsible action, added that: "If a man were in a state of passionate rage, excited by disease, which violently interfered with his actions, so that he had not a fair capacity to weigh what he was doing, or to know that his act was wrong, he was not responsible. They had not to consider whether a man had a particular disease, but whether his conduct was, in itself, sane; and whether he acted from ordinary wicked motives, or under the influence of disease. In this case there

* *History of Criminal Law of England*, Stephen, Vol. ii., page 163.

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appeared to be a mixture of motive. The prisoner was jealous, and he also suffered from epileptic fits, which produced mad, causeless violence. But, if a man acted partly from a common motive and partly from disease, he (his Lordship) suggested it was for a humane jury to give the man the benefit of the doubt, and take into consideration whether they would not have him taken care of, instead of subjecting him to punishment. If there was epileptic fury and insanity mixing with ordinary resentment and causeless jealousy, and a man acted from both motives, his lordship thought the general spirit of the law and its administration suggested that the prisoner should have the benefit of any doubt which arose."

The jury found the prisoner insane.

In the case of Regina *v.* Gill, tried at the Yorkshire Spring Assizes in 1883, before Lord Justice Kay (at that time Mr. Justice Kay), and reported in the *Leeds Mercury* of the 28th of April, 1883, the learned Judge, in charging the jury, is reported to have said that "he did not agree that to prove a man to be insane it was necessary to show that he did not know what act he was then doing, or what was right or wrong. There was another thing which might also justify a jury in finding a man insane; that was if the condition of his mind, from disease, was such that he was subject to uncontrollable impulses. If the prisoner acted under an impulse of this kind, the jury would be justified in finding him irresponsible for his act, on the ground of insanity."

In this case, however, the jury did not find the prisoner insane, but found him guilty of unlawfully wounding, and the Judge sentenced him to five years' penal servitude.

In the course of a discussion which took place in the columns of the *Times* in the autumn of 1894 a very painful case was referred to, in which a member of the bar, held in high esteem for his public and private virtues, was assassinated by one of the inmates of a lunatic asylum which he was visiting. And, in the course of some comments on that case, contained in a letter to the *Times*, dated September 4th, 1894, Sir Herbert Stephen writes:—"I think that if the coroner, magistrates, prosecuting solicitor, counsel, and judge had all been perfectly judicious and well acquainted with their legal duties, that person would have been condemned to death."

Now, with this expression of Sir Herbert Stephen's opinion, it will be interesting to compare the words of the learned Judge who tried the case, and who spoke with a full sense of the responsibility of his office, and in complete possession of all the facts. The trial took place before the Lord Chief Baron of that date—Sir Fitzroy Kelly—and, in the report of the trial given by the *Salisbury Journal* of July 26th, 1873, it is stated that the learned Judge addressed the jury as follows:—

"I do not know what inference you may draw from the evidence, but surely you are not to condemn a man to death for an act committed in a lunatic asylum, seeing that he had been an inmate of it for twenty-one years and an inmate also of another lunatic asylum for six or seven years previously, and seeing that he has suffered during all that time under chronic mania, and that a gentleman who appears as a witness for the prosecution, and who has been familiar with the prisoner's conduct and his habits and with the sad disease under which he labours, tells you his opinion is that he is not responsible for his actions. I think, whatever further evidence may be forthcoming, it will be for you to consider whether you could pronounce a verdict which would consign him to the gallows after the evidence which has been laid before you. If, on the evidence, you think he is not responsible for his actions, and that he was in an unsound state of mind on the 21st of May, it will be your duty to return a verdict of not guilty, in which case he will be kept in confinement during her Majesty's pleasure. If you desire, however, that the case should go further do not let anything that has fallen from me prevent you from hearing additional evidence."

The jury then returned a verdict, in the terms at that time, 1873, in use, of "Not guilty on the ground of insanity."

It will be observed that the Lord Chief Baron did not consider that he was in

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any way hampered by any rigid formula that would be contrary to what he deemed to be right.

The following case may be cited, which was tried at Kingston, in Surrey, on the 4th of April, 1872, and was reported in the *Times* of the following day. The case was one of murder by shooting with a revolver. In charging the jury, the Lord Chief Justice (Bovill) is reported to have said:—"If anyone in his right senses kills another he is, *primâ facie*, guilty of murder. And, *primâ facie*, every person must be presumed to be in his right senses, and therefore to be responsible for his acts. But this applies only in the absence of evidence of unsoundness of mind, and there is evidence here that the mind is unsound. Then it is so difficult to trace the workings of a mind that is unsound that the presumption no longer applies; and, if the evidence satisfies you that the prisoner at the time he committed the act was not in a state to distinguish right from wrong, and was not capable of controlling his actions, then he would not be responsible for the act he committed."

The jury found the accused insane.

And, with reference to the presumption of insanity in criminal cases, the observations of Mr. Justice Denman in the case of Mr. Gilbert Scott may be cited. His lordship is reported, in the *Times* of April 8th, 1884, to have said that "a man must be taken to be sane until he is shown to be the contrary. But, if a man is proved to be insane in July, August, and September, and so on in each following month, and was then tried for murder in April, he (the learned Judge) would never tell the jury that it was necessary still to presume sanity, as though the contrary had never been shown. If insanity had been established, and had gone on for some time, then, in spite of the legal presumption, a different state of things would be raised in the minds of those who, as reasonable men, had to judge of what followed."

Other cases, such, for example, as the case of Brocklehurst, might be cited for the purpose of illustrating the manner in which the question of insanity is sometimes dealt with by judges in actual practice. Brocklehurst was tried at the Cheshire Assizes in October, 1884, before Mr. Justice Cave on a charge of feloniously wounding his wife; and a report of the trial is given in the *Macclesfield Courier and Herald* for November 1st of that year. In the course of the trial evidence was given to the effect that the accused had been an inmate of the County Lunatic Asylum from April to July, and that after his return home he began to accuse his wife of putting something into his food for the purpose of poisoning him, and that, under the influence of these and other delusions, he attacked his wife with an iron coal scraper.

He afterwards said he had done what he wanted, and that he meant to go to the gallows, indicating by that remark that he was clearly aware of the illegality of his act.

When counsel was about to address the jury on the question of the prisoner's insanity his lordship interposed with the remark that the doctor had said distinctly that the prisoner was of unsound mind. Counsel suggested, however, that the question for the jury was whether the prisoner was capable of appreciating the difference between right and wrong; but to this his lordship replied, "No; the question is whether he was insane at the time; and if a man is suffering from delusions and he attacks his wife with a scraper in consequence, it is as clear as anything can be that the man is mad." To the jury: "Do you feel any difficulty about it, gentlemen?" The Foreman: "Not the slightest." His lordship: "It is as clear as can be."

The verdict was that the accused was guilty of feloniously wounding, but that he was insane at the time of committing the act, and he was ordered to be detained during her Majesty's pleasure.

In this connection, too, we may quote Lord Campbell, who, in the discussion on McNaghten's case in the House of Lords, said (*Hansard*, 3rd series, Vol. lxvii., p. 288 *et seq.*) "Unless it were proved that insanity existed at the time the act was committed, and that such insanity might be duly considered the immediate cause of the criminal act, there was, at present, no immunity from conviction and punishment."

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From which it may be fairly assumed that Lord Campbell implied that the converse would also hold good.

It must not be overlooked that, somewhat more than ten years ago, certain amendments, not only in the statutes but also in procedure, were introduced which have not been without effect.

Thus, in the year 1883, an Act was passed entitled the "Trial of Lunatics Act" (46 and 47 Vict., cap. 38), by which, as has been already pointed out at the beginning of this memorandum, the first section of the Act of 1800 was repealed, and other different provisions were made.

A further step was taken in the following year, when some of the statutes relating to Criminal Lunatics were consolidated and revised by the "Criminal Lunatics Act, 1884" (47 and 48 Vict., cap. 64).

In addition to sundry other amendments this Act contains provisions by which the Secretary of State is empowered to attach to the discharge of a criminal lunatic whatever conditions he may think fit; and, further, to order the return into custody of a person so discharged in the event of any of the conditions being broken, or if it should appear that such person had, from any cause, become unfit to remain at large; and thus, in the case of every person who may be found by the jury at his trial to have been guilty of the offence charged against him and yet to have been insane, every care is taken to afford protection against the commission of any further injury by the same person; whilst provision is made by which the accused not only at once receives such care and treatment as his insane condition may require, but by which it is also ensured that his detention and the deprivation of liberty shall not be continued longer than actually necessary in the interests of public safety.

The "Criminal Lunatics Act" also prescribes the manner and the circumstances under which persons may be removed from prisons to asylums on the ground of insanity, either whilst awaiting trial or at a later stage. It will be observed that for the purpose of such removal, not only are the certificates of two medical practitioners and of two members of the Visiting Committee of the prison required, but the approval of the Secretary of State is also necessary. And it will be further observed that in the case of a prisoner under sentence of death there is an additional precaution. In other cases the members of the Visiting Committee "call to their assistance two legally qualified medical practitioners;" but in the case of a prisoner under sentence of death the two medical practitioners are specially appointed by the Secretary of State himself.

With reference to the medical staff of the prisons, it is very satisfactory to observe that the recent Departmental Committee recommend, amongst other things, in their Report, presented to both Houses of Parliament in April, 1895, that candidates for medical appointments in prisons should be required to show that they have given special attention to lunacy; and, also, that weakminded prisoners should be concentrated, as far as possible, in special prisons, and should be under special medical supervision.

It is further to be observed that in the same year in which the "Criminal Lunatics Act" was passed, that is to say in the year 1884, a very important amendment was also introduced into the procedure, in laying evidence before the jury, in those cases in which the accused is alleged, or is believed, to be insane. This amended procedure was explained, in the House of Commons, by the Attorney-General of that day, Sir Henry James (now Lord James of Hereford), on March 17th, 1884, of which a report is given in *Hansard*, 3rd series, Vol. cclxxxvi., page 40. In the course of his remarks Lord James said, "Perhaps it will be the better course for me, in answer to the question of my honourable friend, to state what directions I have given to the Director of Public Prosecutions. I lately received a communication from the Home Office to the effect that, in some recent cases, great inconvenience, if not injustice, had resulted from no responsible person being in charge of cases when the life of the accused was at stake. I was also informed that the Home Office had found great difficulty in dealing with cases of alleged insanity, in consequence of the facts not being brought before the jury, and being only suggested after the trial. It seemed to me, therefore, advisable to take steps to ensure that all evidence bearing on the case, whether tending to

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prove the guilt or the innocence of the prisoner, should be placed before the jury and, with that object, I have requested that, whenever an accused person is brought before justices on a capital charge, the magistrates' clerk shall communicate with the Solicitor of the Treasury, and that that officer shall take charge of the prosecution, unless he finds that some competent private person or local body has the conduct of it; but, in the absence of such proper conduct, it will be the duty of the Treasury Solicitor, acting as the Director of Public Prosecutions, to see that the evidence in every capital case is brought fully before the jury. I have also requested that, in those cases where insanity in the accused is alleged, full inquiry shall be made, and, in the absence of his ability, or of the ability of his friends, to produce witnesses, the Treasury Solicitor shall secure their attendance.

With reference to the foregoing statement of the Attorney-General, it will be observed that, at the date when that statement was made, in March, 1884, the Solicitor of the Treasury is referred to as an officer who, at that time, *acted* as the Director of Public Prosecutions. In the month of August, however, of that year, an Act was passed (47 and 48 Vict. cap. 58), by which the Treasury Solicitor *became* actually the Public Prosecutor. The exact words of the Act are "the person for the time holding the office of Solicitor for the affairs of Her Majesty's Treasury shall be Director of Public Prosecutions."

In giving effect to the instructions, that in those cases where insanity is alleged "full inquiry shall be made" it is now the practice of the Public Prosecutor, in cases of the kind, to make application to independent medical men and to request them, if they are willing so to do, to examine the accused before the trial, and to draw up a report as to the mental condition of the accused, for the information of counsel and of the Court. But this action on the part of the Public Prosecutor does not in any way prevent the accused from bringing forward whatever additional evidence he or his advisers may think desirable.

The object of the Public Prosecutor is to obtain, if possible, an absolutely impartial opinion, and then, at the trial, to lay that opinion, together with all the facts of the case, so far as they can be ascertained, fully and completely before the Court.

What, then, it may be asked, are the actual results? And to this question an answer may be found in the Annual Reports of the Public Prosecutor.

In the Return relating to the Prosecution of Offences Acts, ordered by the House of Commons to be printed, on the 7th of April, 1893 (No. 162), the Public Prosecutor reports, at page 16, that all charges of murder are, and that most charges of manslaughter and of other serious offences against the person are, or ought to be, brought to his notice, so that he may exercise the discretion imposed upon him with reference to this class of indictable offences. And then he goes on to give the following statistics. The number of cases of capital offences brought to his notice in the three years 1890, 1891, and 1892 was 209, the disposal of which was as follows:—

Verdicts of wilful murder returned, and sentences of death passed	55
Found to be insane	51
Verdicts of not guilty	40
Found guilty of manslaughter or of some crime less than murder	63
Total	209

The foregoing figures, which, it may be observed, refer only to England and Wales, show that whilst, in the three years under review, the number of persons, charged with capital offences, who were sentenced to death, was 55, the number charged with capital offences, who were found to be insane, was 51, a number not much less than the number of those who were sentenced to death. And with these figures before us it is clear that, in actual practice, the law is not now interpreted in the manner in which Lord Bramwell understood it when he said that "the present law lays down such a definition of madness that nobody is hardly ever really mad enough to be within it." On the contrary the figures which have been quoted would appear to show that the interpretation placed by

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judges at the present time upon the language of their predecessors is such as to attain the result which Sir James Fitzjames Stephen indicated, and, virtually, "to dispose satisfactorily of all cases whatever."

Having reached this point, it may be useful to ask ourselves these questions:—

I. Is it the fact that all cases are, at the present time, satisfactorily disposed of?

II. If it is not the fact, would not our right course be to draw up a list of recent cases which are considered to have not been satisfactorily disposed of, and then to endeavour to ascertain whether, in each case, such failure has been due, (*a*) to the terms of the answers given by the judges in 1843, or (*b*) to some other cause?

III. Another question that might perhaps arise is, whether a case can be said to have been "satisfactorily" disposed of if such case has been decided in a manner which would appear not to be in absolutely strict conformity with what, by some commentators, has been regarded as the precise meaning of the terms employed by the judges in the year 1843?

But, with respect to this point, it may perhaps be permissible to suggest that the answers given by the judges, in 1843, were given by them for the use of other succeeding judges; and that, if the present distinguished occupants of the bench are able to perceive the possibility of placing upon the terms of those answers an interpretation capable of disposing satisfactorily of every case, it would hardly appear to be for us to attempt to call in question their right so to do.

MURDER BY A PATIENT IN THE DUNDEE ASYLUM.

The Dundee Royal Asylum was recently the scene of a murder by a patient named Redmond, who while at work in the grounds suddenly attacked an attendant with a spade, inflicting serious injuries, and killing outright a fellow patient who came to the rescue. A brother of this patient is reported to have committed homicide. This would appear to be one of those regrettable incidents which constitute the penalty for the innumerable advantages resulting from the modern system of employment of the insane; calling not only for sympathy with the sufferers, but also with the physicians under whose supervision they happen.

PRINCELY HEREDITARY MENTAL DEGENERACY AND MONOMANIA.

Prince Charles de Loos Corswarem was tried before the Correctional Tribunal of Brussels, in February, on charges of swindling and forgery extending over several years. He had obtained "millions of francs" from usurers and others raised on the dowries of ladies whom he was about to marry. He was acquitted, firstly, because he was irresponsible, and secondly, because the charges were not proven. This form of insanity would appear to be associated with a large amount of method.

THE INSANITY LAW.

The Legislature of New York State is proceeding to codify the laws relating to insanity, and the *Medical Record* (7th March, 1896), while justly urging the increase of the Lunacy Commission to eleven members, denounces the provision which is proposed that the medical member "shall have had five years' actual experience in the care and treatment of the insane, and is, or has been a Superintendent or first Assistant Physician of a State Hospital."

The *Record* goes on to recommend that the appointment should be filled by a practitioner experienced in the field of neurology, since "no one trained in asylum methods could detect the errors in the treatment of the insane in these institutions." In other words the view of the *Record* seems to be that the less a man knows about insanity the better qualified he is to act as a Medical Commissioner. In this view, the writer of the *Record* article should be an eligible candidate, but perhaps he is not a neurologist.

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