Lt.-Col. E. Goodall and Dr. Ivor Davies, of Cardiff Royal Infirmary, for his help and advice.

References.—(1) Vogt, *Journ. f. Psych. u. Neurol.*, 1917, xviii.—(2) Wilson, *Brain*, March, 1912; see also Hamilton, *Journ. of Nerv. and Ment. Dis.*, 1916, p. 297; and Sawyer, *Brain*, 1913, p. 223.—(3) Graham Brown, *Journ. Physiol.*, 1914, p. 203.—(4) Westphal, *Arch. f. Psychiat.*, 1913, p. 1.—(5) Sachs, "Proc. New York Neurol. Soc.," *Journ. of Nerv. and Ment. Dis.*, 1916.—(6) Spiller, *ibid.*, 1913, p. 529; 1908, p. 452; 1916, p. 23.

Medico-Legal Notes.

Testamentary Capacity and Criminal Responsibility.

In the report of the appeal to the House of Lords in the case Robins *v.* The National Trust Co., Ltd. and Others, in the *Times* of February 8, 1927, certain dicta as to the onus of proof of incapacity enunciated in the judgment are in marked contrast to those followed in criminal procedure affecting the insane.

The judgment declares that "Those who propounded a will must show that the testator was a person of testamentary capacity . . . The moment the capacity was called in question, then at once the onus lay on those propounding the will to affirm positively the testamentary capacity. . . . Onus was always on a person who asserted a proposition or fact that was not self-evident." Thus, if the insanity of a testator is alleged, though not yet proved, the onus is laid on the propounders of the will to prove sanity, or that even though insane, nevertheless the testator had sufficient testamentary capacity to make a sensible will. If such testamentary capacity is proved, the mere fact of his insanity will not be allowed to invalidate the testator's will.(1)

Now, mark the difference in criminal cases. When a person is charged with murder, and his counsel alleges his insanity and irresponsibility, no onus is thrown on the propounders of the theory that he is responsible (*i.e.*, the Crown prosecutors) to prove their case. Further, even if the prisoner is proved to be insane and his insanity is admitted by the prosecution, nevertheless the onus of proving responsibility is not thrown on the prosecution which alleges it. On the contrary, the onus of proving irresponsibility is laid on the prisoner's counsel, and Lord Justice Atkin's Committee(2) opposed the proposal of the Royal Medico-Psychological Association

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that the onus of proving that the insanity was not calculated to influence the commission of the crime should be thrown on the prosecution.

Surely what is sauce for the goose should be sauce for the gander; and if in testamentary cases those who allege capacity to make a will, in spite of the existence of insanity, are made to prove their allegation, similarly, in criminal cases, those who allege moral capacity in spite of proved insanity should be made to prove their allegation.

In view of the dictum that "onus was always on a person who asserted a proposition or fact which was not self-evident," it would seem logical to ask the prosecutors who allege that a person proved to be insane is nevertheless responsible for his acts, to prove their allegations. It is surely not self-evident that lunatics are responsible for their acts.

As the disagreement between the legal and medical views as to the responsibility of the insane in criminal cases might cease to have much effect in practice if criminal procedure were assimilated to that obtaining in testamentary cases as laid down in this and other recent judgments, it would be of value to learn why such different legal dicta govern the two cases. To the layman, indeed, it would appear that the very reverse would be more logical, *viz.*, to throw the onus of proof on the opposers of the will, and on the allegers of responsibility in criminal cases; for making a will may of itself be *primâ facie* a sign of sanity, while the murder or other violent act committed by a lunatic may of itself be *primâ facie* evidence of insanity.

It must be bewildering for a juryman to hear it laid down in a criminal case to-day that insanity does not imply incapacity to behave properly unless the contrary is proved, and to-morrow in a will case to be told the opposite. Perhaps some legal authority can enlighten us as to the reason for the apparent discrepancy.

J. W.

(1) *Vide* Cook's *Insanity and Mental Deficiency, etc.*, pp. 145 and 148.—(2) *Vide Report*, pp. 7 and 8.

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