

Constructive Incapacity: an American Will Case.

In the American "Journal of Insanity" for Jan., 1875, there is an article by Dr. Ray on a contested will—the Duncan Will Case—in which he discharges, as he says, "the ungracious task of exposing some features of a trial little calculated to shed much lustre on the medical jurisprudence of his country." Had he said that it was not calculated to shed any lustre, but well fitted to cast some ignominy, upon the medical jurisprudence of his country, it would have been hard to dispute the statement. There was nothing in the will itself, nothing on the face of it, which yielded the least indication of insanity; not one of the persons who were in frequent and close intercourse with the deceased for nine months before his death, most of whom were persons of education and of good social position, had the least suspicion that he was not in his right mind; and those who were about him when he made his will, and up to the time of his death, agreed that he was not in any degree unduly influenced in the disposal of his property, and that he understood perfectly what he was doing. In fact, the main provisions of his will, which was made eleven days before his death, were in accordance with the scheme of distribution of his property which he had adopted in two previous wills made by him. If ever, then, a will appeared to be a rational act rationally done, this was one.

But the testator had not left his brothers, whom he declared to have treated him badly, and who admitted having on one occasion uttered something very like a threat to throw him out of window, so much money as they thought they ought to have had, though he had not left them unremembered, and he had left more money than they thought he ought to have done to Wesleyan Chapels and Sunday Schools in which he was interested. Dissatisfied in consequence, they disputed the will. And the surprising part of the affair, which Dr. Ray finds so humiliating to his country, was that eight medical witnesses were found, one of them a professor in a medical college, who, never having seen the testator, knowing only that he had suffered and died from disease of the heart and lungs, declared confidently in Court that his lungs must have been incapable of performing their special function of purifying the blood, and that the brain must have been so poisoned in consequence as to be incapable of anything like healthy mental exercise!

This is an exhibition of medical—we cannot say scientific—testimony which may make the cynic sneer, but will make the judicious grieve. Two things in regard to it strike us with astonishment. First, that any court of justice in the world, pretending to have rules with respect to what is and what is not evidence in a case, should ever have admitted such loose and baseless conjectures as evidence; and, secondly, that any medical man should have been found with so little regard to his own reputation, and to the honour of his profession, as to gravely propound such a theory in the name of science. We are not by any means unqualified admirers of the way in which things are conducted in English courts of justice, but we do rejoice to think that no judge in England would have admitted such testimony. The attempt to introduce it, had any counsel cared so little for his own credit as to have made it, would have been scouted with contempt. We know well, again, that medical witnesses in this country have often given strange and lamentable testimony in courts of justice, whether being ignorant and reckless, or whether biassed by their wishes, interests, or the strong spirit of partizanship, or whether infected with the devouring greed of gain or notoriety; but we hope and think that a solicitor would have been compelled to have gone out into the highways and byeways in order to collect eight medical witnesses willing to give such testimony as was given with regard to the testator's probable mental state in the Duncan Will Case.

It is right to say that besides the pleuritic effusion and the hepatization of the lung found after death, on which these gentlemen constructed their theory of the testator's incapacity, there was found some opacity of the arachnoid; and this, it was alleged, supported their opinion, as it would probably have given rise to some mental disturbance. This is not quite so startling a fabrication as the other, but a student who had made a dozen *post mortem* examinations would not need to be told that it is equally baseless.

It is sad to observe what a complete farce any trial in which scientific questions are involved is fast becoming under the present system of procedure in English and American courts of justice. The Americans, true to their mission, have, however, beaten us and all creation in this respect. A solicitor, whose duty is to do the best he can for his client, goes from medical man to medical man until he discovers one who is ignorant or unscrupulous enough to say what he wants; neither the Court nor the public ever hear of the men who have refused to give evidence; and

when the case is tried, the opinion of one medical man is supposed to be as good scientific testimony as that of another. The Court and jury, knowing nothing of the scientific merits of the question, so ignorant of its very elements that it is impossible they should be instructed during the brief period of the trial, have no means of appraising the relative value of the opinions given, and when they find a conflicting testimony, take no account of the medical evidence. So it comes to pass that the trial is no better than a solemn farce. And yet in most of the cases in which the medical testimony is conflicting, it is perfectly certain that a proper tribunal would have no difficulty in arriving at the truth. Certainly, had the judge in the Duncan Will Case been assisted by the competent advice of an eminent physician sitting by his side as assessor, the medical testimony would not have occasioned him any trouble. Whatever lawyers may think of the disagreement of doctors, we can assure them that definite medical knowledge does exist, and that much medical evidence which is given now because its worthlessness easily escapes exposure, would never be given before a competent tribunal.

We should not have referred to this case, which has no scientific importance—which seems to us of interest only to Americans, as it concerns medical morality and the administration of justice—had not Dr. Ray's article brought back to our recollection that in May, 1872, we were asked for an opinion on the case. The opinion, given in writing, in answer to questions, the purport of which will appear from its tenour, was as follows:—

I have perused carefully the evidence taken to sustain the will of the late Thomas G. Duncan, which has been submitted to me—namely, the evidence of Joseph Ferris, draper, and of Robinson Scott, Wesleyan minister, who were witnesses of the will; of Thomas H. Pardon and William Aitken, the physicians who attended Thomas G. Duncan during his last illness; of James Stewart, law clerk, and James Rhea, U.S. Consul at Belfast; of James Lindsay and Mrs. Lindsay, together with a report of the *post mortem* examination by Dr. Murray.

The report of the *post mortem* examination proves that Thomas G. Duncan died from disease of the heart and lungs. The morbid appearances described in these organs are quite consistent with the existence of a sound state of mind. They would not, by themselves, warrant a suspicion of any failure of mind.

The brain itself is said to have been free from disease, and the opacity of the arachnoid membrane over both hemispheres, though often observed in the bodies of those whose minds have been

affected, is sometimes met with in the bodies of those in whom there has been neither mental derangement nor mental weakness.

The symptoms exhibited during life were such as would naturally accompany the morbid conditions found after death. The difficulty of breathing, the inability to lie down in bed, and the lowness of the voice were attributable to the state of the heart and lungs. The wish to return to America a few days before his death, when he was manifestly unfit for such a voyage, seems to have been such a longing as is sometimes exhibited by dying persons, who believe, in spite of assurances to the contrary, that they might recover if they were only back in the scenes of their youth or of their former activity and health. It may be presumed that the increasing weakness of body during the last few days of life, and a probable deficient supply of blood to the brain in consequence of the diseased state of the heart, had in some degree impaired his judgment and affected the vigour of his mind.

Whether the provisions of the will indicate entirely free and rational action will, of course, depend somewhat on what were the testator's former relations to his brothers, and to those persons to whom he has left the bulk of his property.

The medicines which he was taking up to the time of his death were not of a character to affect the mind.

Judging from the data supplied in the evidence of the witnesses, and in the report of the *post mortem* examination, I do not perceive valid reasons for supposing that the will signed on the 20th May, twelve days before death, was not the voluntary act of a person of sound mind.

The gentleman who did us the honour to request our opinion upon the evidence, and who introduced himself as a Judge —, was, we fear, disappointed with the result. We have heard no more of him since. He no doubt believes that English physicians give gratuitous advice to their American cousins.

H. M.

CLINICAL NOTES AND CASES.

Bromide of Potassium in Epilepsy, by P. NORTON MANNING, M.D., Inspector of the Insane in New South Wales.

In the "Practitioner" for January, 1874, the late Dr. Anstie related a case of Epilepsy "cured" by Bromide of Potassium as the solitary instance within his own experience in which well-developed fits were completely stopped and remained absent long after the discontinuance of the medicine, and mentioned that Dr. Hughlings Jackson, whose general experience on this subject was in substantial agree-