treatment, and if the patient is suicidal or homicidal and cannot be properly looked after, then no reasonable delay ought to be allowed to interfere with the patient's removal to an asylum.

OCCASIONAL NOTES OF THE QUARTER.

Drunkenness and Crime.

The correspondence between Sir Henry James and Sir Lyon Playfair published in the *Times* of January 5th, 1892, has once more fixed the attention of the public on the vexed and still unsettled problem of the criminal responsibility of the inebriate. It would be obviously unfair, and we do not propose, to criticize Sir Henry James's letter as if it were a draft Parliamentary Bill declaring and formally defining the law of England as to drunkenness and crime. We shall deal with the opinions expressed in the letter, and not with the language in which they are conveyed. Sir Henry James states his views in the following terms:—"In determining the legal character of the offence committed, drunkenness may be taken into account—(1) Where it has established a condition of positive and well-defined insanity; (2) if it produces a sudden outbreak of passion occasioning the commission of crime under circumstances which, in the case of a sober person, would reduce the offence of murder to manslaughter; (3) in the case of minor assaults and acts of violence it never can form any legal answer to the charge preferred, but it may either aggravate or mitigate the act committed—probably the former; (4) as to the effect that should be given to drunkenness when determining the amount of punishment to be inflicted no general rule can be laid down—its existence may be considered, and may tend either in the direction of increasing or diminishing the punishment imposed." This analysis of the juridical character of inebriety is, we venture to think, obnoxious to very serious criticism. In the first place, Sir Henry James would seem to hold that the only cases in which intoxication can diminish the criminality of an act are cases of murder and aggravated assault. We know of no logical or practical justi-

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fication for this opinion. The *mens rea* is a necessary element in every crime; inebriety is logically as admissible to negative its existence in a case of horse-whipping as in a case of homicide, and, if public policy is to be considered, the plea of inebriety may surely be allowed with greater safety in the former case than in the latter. Again, Sir Henry James would revive the old, and, as we had hoped, exploded fallacy of the "external standard." A. in a fit of passion produced by drink stabs B. Is the crime murder or manslaughter? How shall we answer the question? Take, says Sir Henry, the ordinary "sober person," C. Assume that under the influence of the same outburst of anger—not induced, however, by alcoholic excesses—he had committed the same act. Would you call his crime murder or manslaughter? Then judge A. by the same standard. This test is liable to two grave objections. It is practically incapable of being applied at all, and even if it were applicable it would work great injustice. The doctrine of the "external standard" was never meant to govern the responsibility of lunatics or inebriates. In the pages of the "Journal of Mental Science" it is hardly necessary to point out that Sir Henry James's proposed criterion is simply the old mischievous test of exculpatory delusion propounded by the House of Lords in McNaghten's case. Assume that the delusions were really facts. Would they form a legal justification for what the prisoner has done? In other words, first admit that a man is subject to delusions and then expect him to reason sanely upon them. In the third place, Sir Henry James reasserts the historic doctrine that drunkenness is or may be an aggravation of a crime committed under its influence. It is true that Lord Coke expressed the same opinion. It is equally true that Sir Matthew Hale treated it as being simply the dictum of "some civilians," and declared that the inebriate should "have the same judgment as if he were in his right senses"—nothing less and nothing more. Drunkenness is perfectly different in character from what are usually called "circumstances of aggravation," and should be punished, if at all, as a separate offence. Finally, Sir Henry James's exposition of the law is incomplete. It takes no account of the principle—now judicially recognized—that a plea of inebriety is relevant and admissible, not only to alter the character of a criminal act, but to negative the existence of criminal intent. It

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contains no reference to the famous "alloys" which even Sir Matthew Hale annexed to the *voluntarius daemon* theory of Coke; and it is absolutely silent as to, if not, indeed, inconsistent with, the later *nisi prius* developments of the law of "drunkenness and crime." Some of our bolder judicial spirits have treated Coke and Hale with the same scant reverence that Cockburn displayed towards the *wild beast* theory of Mr. Justice Tracy, and the *right and wrong in the abstract* theory of Lord Mansfield. Sir Henry James says that inebriety is an *exculpatory* plea only when it has established "a condition of positive and well-defined insanity." In 1886 Mr. Justice Day told a Lancaster jury that "if a man was in such a state of intoxication that he did not know the nature of his act, or that it was wrongful," he was insane in the eye of the law, and that it was perfectly immaterial whether the mental derangement resulting from such intoxication was permanent or temporary. Sir Henry James would limit the reception of a plea of inebriety by way of extenuation to cases of homicide or aggravated assault. Lord Deas, the modern Braxfield, received it in a case of theft. In 1887 Chief Baron Palles still further relaxed the old legal theory. "If a person," said his lordship, "from any cause, say, long watching, want of sleep, or depravation of blood, was reduced to such a condition that a smaller quantity of stimulants would make him drunk than would produce such a state if he were in health, then neither law nor common sense could hold him responsible for his acts, inasmuch as they were not voluntary, but produced by disease." And in 1888 Baron Pollock held that the law was the same where insane predisposition and not physical weakness was the proximate cause of the intoxication. With great respect to Sir Henry James, we venture to think that when the criminal law of England is codified, as it ought to be, and will be, the criminal responsibility of the inebriate will be defined in something like the following terms: 1. Every man is to be presumed to be sober and responsible unless and until the contrary is proved. 2. In any criminal case a plea of inebriety shall be admissible either (*a*) to negative the existence of criminal intent, or (*b*) to reduce an offence from one grade of criminality to another. 3. Intoxication, whether voluntary or involuntary, which does *in fact* prevent a man from knowing the nature and quality of his acts, is entitled to the same privilege that

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