On Medico-Legal Uncertainties. By. J. W. Eastwood, M.D., Edin.

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To wander over the whole field of medico-legal uncertainties would lead us amongst railway injuries, criminal cases of every kind, disputed wills, and various subjects, psychological and non-psychological. Such a wide scope is not the object of this paper, but I wish to place before you some facts of an important department, which I trust will, sooner or later, be brought seriously before the profession and the legislature.

The uncertainties to which I wish to draw your attention are produced by several causes, conveniently divided into medical and legal.

1. Medical difficulties, inherent in the subject itself, from the nature of the human mind; and those arising from the variety of medical evidence.
2. Legal difficulties, caused by the state of the law, and the uncertainties of its administration.

In a court of law it is entirely overlooked, that in trials of psychological interest, it is the human mind, with all its complex workings, that has to be considered, and that no subject is more difficult to comprehend. There is no accurate definition of insanity, either medical or legal; and there is no standard of sanity, except that which a man makes for himself. The *mens sana in corpore sano* exists only in words, as an ideal standard, for who has ever successfully defined "a sound mind?" The difficulties arising from this source can never be removed, but those arising from the variety of medical evidence, as generally given, may be almost entirely removed by a different plan of procedure in our courts of law. It is not borne in mind that there is a large class of persons, especially amongst our criminal population, who are on the border land between mental soundness and unsoundness, whose moral instincts are very feeble, whether owing to nature or education.

It is not therefore to be expected that differences of opinion can be done away with, but they may be brought

within much narrower limits. Lawyers often make severe comments upon the medical evidence, and even the judges and the press use very strong language, whilst the uncertainties caused by the state of the law itself, and the practice of different judges, have received very little attention beyond our own profession.

The facts which I am desirous of placing before you, are connected with the four following departments of medico-legal practice:—

I. The legal capability of making a will.
II. The proof of a person's soundness of mind, and fitness for managing his own affairs.
III. The question of insanity in criminal cases.
IV. The admissibility of an insane person's evidence in a court of law.

I.—A person can legally make a will, who understands the nature of his property, and proper disposition of it; but the existence of a delusion is sufficient to render it invalid, even if it have no connection with the subject of the will. Lord Brougham defined a delusion to be, "the belief in things as realities which exist only in the imagination of the patient;" and the case by which he illustrates this is certainly worth recording. "Suppose one," he says, "who believed himself the Emperor of Germany, and on all other subjects was apparently of sound mind, did any act requiring mind, memory, and understanding—suppose he made his will, and either did not sign it, or before signing was required, or, if he did, signed it with his own name; but suppose we were quite convinced, that had any one spoken of the Germanic diet, or proceeded to abuse the German Emperor, the testator's delusion would at once break forth, then we must at once pronounce the will void, be it as efficacious and as rational in every respect as any disposition of property could be; of course no one could propound such a will with any hopes of probate, if it happened that, while making it, the delusion had broken out, even although the instrument bore no marks of its existence at the time of its concoction." Now this language is in marked contrast to some observations which Lord Brougham made in a number of the *Jurist*, on "Partial Insanity," arising out of a case where probate to a will was refused. He maintains strongly the "unity and indivisibility" of the mind, and rejects the idea of partial in-

sanity. His arguments would not profit us much, even if we understood them; but they were those of a lawyer and a philosopher in his closet, and not of an observant psychologist. "We cannot, therefore," he concludes, "in any correctness of language, speak of *general* or *partial* insanity; but we may, most accurately, speak of the mind exerting itself in consciousness without cloud or imperfection, but being morbid when it fancies; and so its owner may have a diseased imagination, or the imagination may be impaired, and the owner may be said to have lost his memory."

The learned lord admits that a man's mind may be sound on some subjects, not on others, as where he instances a single delusion—that of being Emperor of Germany. This is very much like partial insanity, and it is not necessary to be a devoted follower of Gall and Spurzheim to see the fallacy of the conclusions thus drawn.

To come to more recent instances we shall find no essential difference in the addresses to the juries. The late Sir Cresswell Cresswell, at the Court of Probate, informed the jury that the testator "would not be incapable of making a will, if he was able to understand the nature of the property he was disposing of, to bear in mind his relatives, and the persons connected with him, and to make an election of the parties he wished to benefit. It was not enough, on the one hand, that he should be able to say 'yes,' or 'no' to a simple question; nor, on the other hand, was it necessary that he should be a well-informed man or a scholar. He might be stupid, dull, or ignorant; but if he understood the nature of his property, and could select the objects of his bounty, that would be sufficient." The same judge observed, on another occasion, "that a person who was mad on half-a-dozen points might have sufficient capacity to know his property, and to prove an intention as to who should have it after him. His will would not stand good, because his mind was unsound. So, if in this case the man had any insane delusion upon his mind, and acted upon the influence of an insane delusion, that mind was unsound, and they could not maintain a will that was made by a person under those circumstances."

These remarks are of great practical importance to medical men, who are called upon to give their opinions respecting the state of mind of their patients, at the time of making their wills.

II.—The proof of a person's soundness of mind, and fitness for managing his own affairs.

He who is incapable of making a will, legally speaking, may be quite capable of taking care of himself, and of managing his own affairs. On this subject, however, the uncertainty is not caused by legal definitions of what does, or does not, constitute unsoundness of mind, but by the procedure of our courts, in which the evidence is often so conflicting. Owing, probably, to the fact that the judges who try these cases are the masters in lunacy, who, in course of practice, attain to a considerable knowledge of morbid mental states, the addresses made to juries are more consistent with medical opinions than in criminal and other trials. In one case, where an old lady was the subject of an inquiry of this kind, the evidence was extremely contradictory, and the jury was much puzzled. After all the evidence had been heard the jury retired, and the master had a quiet interview with the lady in their presence. The result was that the jury, twenty-three in number, came to a unanimous verdict that the lady was of unsound mind. The trial had lasted six days, at a serious cost, which might have been in a great measure saved. The case which I have now to bring before you well illustrates the uncertainty of these proceedings, and the necessity for some change.

In July, 1866, Mr. C. M., a successful tradesman, became my patient, for the second time, consequent upon an outbreak of maniacal violence, caused immediately by intemperance. He was in a dirty, miserable condition when I saw him, incoherent in his language, and very bitterly opposed to his only son, a medical man. His form of insanity I regarded as incoherent mania, and there was loss of memory, with delusions, most of which were variable. One of the fixed ones was that his son had burnt his will before his face, the minute particulars of which he related to me and others many times. Although the excitement produced by the drink soon passed away, yet his mental condition remained much the same. Some of his friends having made application to the Commissioners in Lunacy, I was twice requested by them to make a report as to his mental condition. Two medical men having made a different report from mine, the Commissioners requested the Visiting Magistrates and their medical adviser, Dr. Humble, to pay a special visit to Mr. M. to see if he were fit to be discharged. They declined to discharge him, and the son of the patient then applied for an inquiry into the

state of his father's mind. In the meantime two of the Commissioners in Lunacy saw him afterwards, at their ordinary visit, and considered him insane, though they declined to interfere officially owing to the proceedings undertaken. The application for an inquiry was not granted until after the second visit of Dr. Hood, the Chancery visitor. The usual notice was then served upon the patient, and though he declined a jury, his friends obtained one. The trial took place in May, 1867, at Gateshead, before Samuel Warren, Esq., Master in Lunacy, and a special jury of eighteen.

The case excited considerable interest in the neighbourhood, and the medical evidence was conflicting. In support of the patient's unsoundness of mind were Mr. S. H. L. Murray and Mr. John Hawthorn, who signed the certificates, Drs. Charlton and Humble, physicians to the Newcastle-on-Tyne Infirmary, and myself. Against the insanity, the late Dr. White, also physician to the Infirmary, Sir John Fife, Dr. Alexander, and Mr. C. Larkin. The alleged lunatic had delusions that his son had burnt his will, which document was produced in court—that a fellow patient had been killed by an attendant, which was without foundation in truth, and sundry other minor delusions. It was remarkable that of the four medical men brought by the friends of the patient, all of them listened to his delusions, considered him sane, left the house, and never inquired whether the statements were true or false. They came and believed all they heard. Many insane patients may be found who in such a manner could be pronounced sane. After a long trial, and an able summing up on the part of the master in favour of the alleged lunatic's unsoundness of mind, the jury decided that Mr. M. was of sound mind, capable of taking care of himself, and managing his own affairs. This verdict was received with much surprise by the court. Mr. M., no longer a patient, was at liberty to do as he liked. He returned to his old habits, had again attacks of maniacal violence, from which he had been long free, and in less than four months he died with delirious symptoms.

III.—The question of insanity in criminal cases.

Persons are held responsible for their actions if they know right from wrong, even when labouring under delusions.

On no one point connected with this subject are judges better agreed than upon the theory of what constitutes responsibility in criminal cases. So long since as 1812, when Bellingham was tried for shooting the Right Hon. Spencer

Perceval, in the House of Commons, Sir Vicary Gibbs, for the prosecution, said, "upon the authority of the first sages of this country, and upon the authority of the established law in all times, which law has never been questioned, that although a man might be incapable of conducting his own affairs, he may still be answerable for his criminal acts, if he possess a mind capable of distinguishing right from wrong." So able a lawyer as Lord Mansfield, who tried this case, repeated the same views. "The simple question," he said, in his charge to the jury, "whether, when he committed the offence charged upon him, he had sufficient understanding to distinguish good from evil, right from wrong; and that murder was a crime, not only against the law of God, but against the law of the country."

This state of the law continues still to exist, but it is satisfactory to observe that so harsh a theory of the lawyers is not always carried out in practice, or many a poor lunatic would hang by the neck, as was frequently the case some years ago. At the trial of Dove, at Leeds, in 1856, Mr. Baron Bramwell laid down the same law in these barbarous words, that if a prisoner "was under the delusion that the deceased had inflicted some injury upon him, and murdered her whilst under that delusion, *he would none the less be amenable to punishment.*"

Persons may become criminal lunatics in the following ways:—

1. When in custody for some crime, the prisoner may be brought to trial, and declared unfit to plead from "unsoundness of mind," whether he was insane or not at the time of his supposed commission of the crime.
2. He may be brought to trial, and the plea of insanity set up, evidence being heard on both sides, and he may be declared of unsound mind, and consequently not responsible.
3. He may be found guilty, with or without any enquiry into the state of his mind, and may become insane before execution, or whilst undergoing the sentence of punishment.

In these several ways, therefore, *before* the trial, *at* the trial, and *after* the trial, the mental soundness of the prisoner may be enquired into. The process in each case varies greatly, and I shall be able to show that the theory and the practice of the law are quite as uncertain as the theory and practice of medicine.

Numerous instances occur to illustrate the first form of proceeding, as when the prisoner is manifestly unfit to plead from well-recognised insanity, or when he is actually a lunatic, medically and legally, at the time of the commission of the offence. In such cases it becomes almost a mere form to consign the *patient* rather than *prisoner* to an asylum, there to await Her Majesty's pleasure. But with some prisoners it is not thus easy to come to a safe conclusion. One case to illustrate this I shall mention, because it is a striking instance in point, and it came under my own observation.

Cuthbert R. Carr, aged 18, was charged with the murder of Sarah Melvin, aged 7, at Carr's Hill, near Gateshead, on the 13th of April, 1866. The trial took place before Mr. Justice Lush, at Durham, on the 10th of December, 1866. For a long time it was not known who was the perpetrator of the crimes of rape and murder on the little girl mentioned, for though suspicion pointed to young Carr, yet it was not sufficient to warrant his apprehension. After two months he gave himself up at Gateshead, and in the month of June, I saw him on two occasions at the prison there. Three or four medical men also saw him besides, and I never heard of any one who was able to discover any unsoundness of mind in the prisoner. From the report I then made, I copy a few statements on three important points:—

a. "The existence of delusions. Unless the whole confession of the murder be a delusion, there is no belief or statement the prisoner has made to me that can be considered a delusion."

b. "He has now, and says he had at the time of the act, *a full knowledge of right and wrong*, the great legal test of insanity in such cases."

c. "At the time of the murder he had *the power of self-control*—that is, he could have refrained from committing the deed, had he liked to do so."

Although it was evident that this young man belonged to that large class of persons with ill-regulated minds and passions, from which our criminals are derived, yet I could only come to the conclusion that he was responsible for his actions.

When brought to trial he persisted in pleading guilty, and no persuasion could make him change his mind. The judge asked if he was in a condition to plead, and the counsel for

the defence said he thought not, but that there were two medical men who could give evidence as to the state of his mind. They were of opinion that the prisoner was of unsound mind, and there was no one to oppose them. They gave no facts to the jury, such as the existence of delusions, on which they based their opinion, but it was decided that the prisoner was not fit to plead. The whole proceedings occupied a very short time, much to the astonishment of many persons in court. It was not stated that the prisoner did not understand the consequences, but did not *appreciate* them. When I saw him he perfectly understood and appreciated his position, and though some months had elapsed, and time had been given for a considerable mental change to have taken place, yet I could not learn from his solicitor that there had been any change of importance. The result of the verdict was, that the judge directed the prisoner be kept in strict custody until Her Majesty's pleasure be known. According to the law, should this young man ever be of sound mind, he must be brought to trial for the crime he committed, but this will never take place, for he will simply remain a criminal lunatic for life, and possibly, though not probably, he is innocent of the crime.

At the same assizes two days before, Henry Brownless, aged 55, was charged with the murder of a child named Reed, at Houghton-le-Spring, Durham, on the 18th of October, 1866. The plea of insanity was set up, but unsuccessful, although the prisoner was so far of unsound mind that the judge addressed him in these words:—"You are of such a temperament that when you had a small quantity of spirit it threw you into a state of great excitement." The man was sentenced to death, and the judge refused an application to consider his sanity, notwithstanding some apparently stronger evidence than existed in the other prisoner brought before him. The circumstances of this murder were not more atrocious than those of the other, and in both cases a child was the victim. The prisoner fired a barrel of gunpowder for the purpose of killing his daughter-in-law, but a child was killed instead. The sentence of death was passed upon him, and the judge afterwards refused to listen to the plea of insanity. Subsequently, however, such representations were made that the sentence upon Brownless was commuted to penal servitude for life, on the ground of insanity. He was removed to Millbank Penitentiary, and then to Portland, where he remains. I may ask why Carr is in a lunatic asy-

lum, and Brownless in a prison? If the latter was insane, why was he not also sent to an asylum, and treated as a patient instead of a prisoner? The uncertainty of the law is the only answer to these questions.

In the second class of cases there is a full and open trial—that is, witnesses are examined on both sides, and it is here where we see so much divergence of opinion amongst medical men. Many instances of this kind occur, but in the one I am about to mention the verdict of the jury was that the prisoner was of sound mind. A youth aged 16, Henry Gabbites, murdered his fellow-apprentice at Sheffield, without adequate cause or provocation. He was tried at the Leeds Assizes, before Mr. Justice Lush, on the 18th December, 1866. Considerable evidence was brought forward to show that the prisoner was of defective intellect, and the usual want of unanimity appeared amongst the medical witnesses. A verdict of guilty was given with a recommendation to mercy on account of the youth of the prisoner. There seened to be as much reason for this boy's acquittal on tne ground of insanity, as in the case of Carr, many of the circumstances being similar. The Judge, who so easily gave way to the medical evidence at Durham, where there was not a full trial, was at Leeds very severe upon the doctors. The legal test of responsibility—a knowledge of right from wrong, was proved in this instance. His lordship observed that "medical men had theories which did not square with the law, by which a judge and jury must be guided; and he cautioned the jury not to admit excuses for a ferocious act of murder, which depended only on scientific hypothesis, and to be very slow indeed to draw a conclusion, that the prisoner was in that state of mind which prevented his knowing what he was doing." Certainly in the other case mentioned, both judge and jury were very ready, instead of being very slow, to listen to excuses for a ferocious act of rape and murder, and also to the theories of medical men, the whole proceedings being ended in about ten minutes! The sentence of death was passed upon young Gabbites, who "maintained to the end an impassive and stolid bearing, betraying not the least emotion." The full penalty of the law was very properly commuted into imprisonment for life, not as a lunatic, but as an ordinary criminal. On the whole, it seems that full justice was done in this instance, and whilst the law was vindicated, humanity was satisfied.

Under the third head many examples are occurring. It often happens that a prisoner becomes insane whilst under-

going his sentence of imprisonment, when he is removed from prison to a criminal lunatic asylum, and is there treated as a patient instead of a prisoner.

The best instance of uncertainty in this class of cases, occurred in the remarkable career of George Victor Townley, who murdered a young lady in Derbyshire, on the 21st of August, 1863. Before the trial Dr. Hitchman, an experienced psychologist, visited him in prison, and found no symptoms of insanity in Townley. At the trial Dr. Forbes Winslow gave evidence to the contrary, yet the prisoner was found guilty and sentenced to death. After the trial Messrs. Campbell, Forster, and Wilkes, Commissioners in Lunacy, visited him, and reported him of unsound mind. Two local medical men and three justices of the peace visited Townley, considered him insane, and he was removed to Bethlehem Hospital. The now patient was then visited by a government commission, consisting of Drs. Bucknill, Hood, Helps, and Myers, who found him of sound mind, and he was then removed to Pentonville Prison as a prisoner, the sentence of death being commuted into penal servitude for life. His suicidal end is well known, and the fact was interpreted according to the opinions of those who held the unfortunate man to be sane or insane. It is very certain that whatever view we take, the extraordinary uncertainty of this man's career would have been avoided by a proper and thorough examination before the trial; and we may remark the anomaly that after a judge and jury had condemned the prisoner, it should be in the power of two medical men and three justices to send him to a lunatic asylum, without any further mental change having taken place. It was hoped that this remarkable trial would have caused some alteration in the law, but though a profound effect was produced at the time, it has entirely passed off, until some more flagrant instance startles men so much as to compel serious attention to be paid to the subject.

In looking over addresses to juries during a long series of years, by Lords Mansfield, Brougham, Denman, Campbell, Mr. Baron Bramwell, and many others, I find great differences of opinion amongst them. They are generally agreed that the existence of delusion is the great legal test necessary to prove insanity, yet there are some who differ from this view. In March, 1849, at a trial for murder, Lord Denman addressed the jury in these words:—"They all knew that doctors were in the habit of making theories, but the jury were to say

whether those theories were right, and whether there was any proof that the prisoner was under the influence of such morbid affection as to render him irresponsible for his acts. Now he did not find that any delusion had been shown. To say a man who was irresponsible, without positive proof of any act to show that he was labouring under some delusion, seemed to him to be a presumption of knowledge which none but the great Creator himself could possess." In July, 1850, Lord Campbell stated distinctly at a trial that "there might be mania without delusion," meaning thereby insanity without delusion. And though we have seen how indignantly Lord Denman rejected the evidence for insanity without proof of delusion, yet in another case Mr. Justice Maule allowed it, and in Carr's case at Durham, Mr. Justice Lush required neither delusion nor any other tangible evidence of insanity. Instances frequently come under the notice of those accustomed to treat mental diseases, of unsoundness of mind without delusion.

It is satisfactory to notice that there is a tendency in the practice of our courts *not* to carry out the theories of the lawyers, and the literal direction of the statute law. It is thus recognised that at least considerable latitude must be given. In one of the most recent decisions, Regina v. Shaw, where a point was reserved as to the meaning of "a person of unsound mind," it was held that it was not necessary to prove the existence of a delusion, but that mental weakness, incapacity for business, and the inability to take care of himself, were sufficient. The Commissioners in Lunacy continually act upon this in their examination of the certificates sent to them.

IV. The admissibility of an insane person's evidence in a court of law.

Persons are capable of giving evidence in a court of law, if they know what they are saying, and understand the nature of an oath, even when labouring under delusions. At a trial where Lord Campbell presided, a lunatic from an asylum was brought to give evidence, when the learned lord said:—"The proper test must always be, does the lunatic understand what he is saying, and does he understand the obligation of an oath?" He thought such was the case, and Barons Alderson and Platt agreed, whilst Mr. Justice Coleridge in agreeing also, further stated:—"there was a disease of the mind of the witness, operating upon particular subjects, of which the transacton of which he came to speak was not one. He was

perfectly sane upon all other things than the particular subject of his delusion." This must be partial insanity, but Lord Brougham says there is no such thing. We thus see that a man who is prevented from disposing of his own property, even in a perfectly rational manner, is considered worthy of credit as witness against the life of another person.

I trust I have brought forward sufficient evidence to show how difficult it is to carry out the theories and definitions of lawyers, as well as how uncertain is the practice of the law in those cases, where soundness of mind is called in question. When so many eminent men in two learned professions differ from each other to such a great extent, there must be something wrong in the state of the law, and in the procedure of the courts. There is need of great reform on many subjects, but at least much might be done by the appointment of a well-selected commission of physicians, in all cases where there is a prospect of dispute, to decide certain questions, and thus to avoid those unseemly contests which so often bring our profession into disrepute, and really cause injustice to individuals. That the fault is not always ours, I think I have made sufficiently clear to you. Even if the medical witnesses on both sides were to meet together in an amicable spirit, and consider the evidence, much difference of opinion might be removed. No agreement among ourselves will, however, entirely remedy the existing state of things, without a change of law, and I hope to see such a change brought about by the means which are now being attempted. The new department of state medicine has grown rapidly, and it is proposed that a Royal Commission shall be issued to enquire into a great many subjects of much interest to our profession, and in which its members have been most earnest and persevering. The initative has been taken by a joint committee of the Social Science and British Medical Associations, and their efforts have been already successful in bringing the subject before the government. I shall be satisfied if I have shown you how much need there is of considerable reform in the present state of legal medicine.